



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, CNL, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants April 03, 2022 (the “Application”). The Tenants applied as follows:

- To dispute a Two Month Notice to End Tenancy for Landlord's Use of Property dated March 30, 2022 (the “Notice”)
- For an order that the Landlords comply with the Act, regulation and/or the tenancy agreement
- To recover the filing fee

The Tenants appeared at the hearing. The Landlords appeared at the hearing. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

Pursuant to rule 2.3 of the Rules, I told the Tenants at the outset of the hearing that I would consider the dispute of the Notice and dismiss the request for an order that the Landlords comply with the Act, regulation and/or the tenancy agreement as it is not sufficiently related to the dispute of the Notice. I have considered the dispute of the Notice and request to recover the filing fee. The request for an order that the Landlords comply with the Act, regulation and/or the tenancy agreement is dismissed with leave to re-apply. This decision does not extend any time limits set out in the *Residential Tenancy Act* (the “Act”).

The Tenants submitted evidence prior to the hearing. The Landlords did not submit evidence. I confirmed service of the hearing package and Tenants' evidence and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all relevant evidence provided. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, should the Landlords be issued an Order of Possession?
3. Are the Tenants entitled to recover the filing fee?

Background and Evidence

A written tenancy agreement was submitted, and the parties agreed it is accurate. The tenancy started June 01, 2012, and is a month-to-month tenancy.

Landlord N.H. raised an issue during their reply submissions about whether K.B. is a tenant or occupant in relation to the rental unit. I did not hear the parties on this issue further. To be clear, I have not heard the parties on whether K.B. is a tenant or occupant of the rental unit and have not decided this issue.

The Notice was submitted. The grounds for the Notice are:

The rental unit will be occupied by the Landlord or the Landlord's close family member.

The Notice is on an old RTB form from 2016 and is only two pages.

The parties agreed the Notice was served on the Tenants in person March 30, 2022.

The parties provided testimony and submissions about the grounds for the Notice; however, I do not find it necessary to outline these here given my decision in this matter.

Analysis

The Notice was issued pursuant to section 49(3) of the *Act* which states:

A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Pursuant to section 49(8)(a) of the *Act*, the Tenants had 15 days to dispute the Notice. Based on the testimony of both parties, I accept that the Tenants received the Notice March 30, 2022. The Application was filed April 03, 2022, within time.

I find the Notice is not valid. Section 49(7) of the *Act* requires the Notice to comply with section 52 of the *Act* in form and content. Section 52(e) of the *Act* requires the Notice to be in the approved form. The approved form is the current RTB form. The Notice is on an old RTB form from 2016, not the current RTB form from 2021. The RTB form has changed since 2016, specifically, the form is now four pages not two pages and pages three and four of the current form include important information for tenants. As well, the current form requires a landlord to state on it specifically who will occupy the rental unit whereas the 2016 RTB form did not. Landlords should not be using the old RTB form, the form has been changed for a reason. There is no excuse for using an old RTB form as the current RTB form is readily available on the RTB website. Given the Notice is not on the current RTB form, it is not on the approved form and does not comply with section 52 or 49(7) of the *Act*.

Given the Notice does not comply with section 52 or 49(7) of the *Act*, the Notice is not a valid notice to end tenancy and is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

Given the Tenants have been successful in the Application, I award them \$100.00 as reimbursement for the filing fee pursuant to section 72(1) of the *Act*. Pursuant to section 72(2) of the *Act*, the Tenants can deduct \$100.00 from their next rent payment.

Conclusion

The Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

The Tenants can deduct \$100.00 from their next rent payment.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: July 25, 2022

Residential Tenancy Branch