



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding STRATATECH CONSULTING, STOFFEL DE
BRUIJN and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **CNL, FFT**

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the "2 Month Notice") pursuant to section 49; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

All parties attended the hearing and were given an opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. NC confirmed they are the agent for the named corporate respondent which is a property management company, hired by the personal landlord to manager the rental property.

In accordance with the *Act*, Residential Tenancy Rule of Procedure 6.1 and 7.17 and the principles of fairness and the Branch's objective of fair, efficient and consistent dispute resolution process parties were given an opportunity to make submissions and present evidence related to the claim. The parties were directed to make succinct submissions, and pursuant to my authority under Rule 7.17 were directed against making unnecessary submissions or remarks not related to the matter at hand.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The tenants testified that they were served with the 2 Month Notice dated April 20, 2022 and filed their application to

dispute the notice on May 3, 2022. The landlord confirmed they were served with the tenants' application and evidence and had filed no evidence of their own. Based on the undisputed testimonies I find the landlord duly served with the tenants' materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Should the 2 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Are the tenants entitled to recover their filing fee from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. This periodic tenancy originally began on June 1, 2019. The current monthly rent is \$1,500.00 payable on the first of each month. A security deposit of \$750.00 was collected at the start of the tenancy and is still held by the landlord. The rental unit is a single detached house.

The personal landlord testified that they are currently residing in a property they rent in the same municipality and the owners of that property have informed them of their intention to sell that property. The landlord said that they initially attempted to sell the rental unit to purchase the property they were residing in but they were ultimately unable to make those arrangements. The landlord says that they have subsequently decided to move into the rental unit and instructed the corporate landlord, the property managers, to issue the present 2 Month Notice.

Analysis

Section 49(8)(a) of the *Act* provides that upon receipt of a notice to end tenancy for landlord's use of property issued under subsection (3) or (4) the tenant may, within fifteen days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

I accept the undisputed evidence that the 2 Month Notice was received on or about April 20, 2022 and the tenants filed their application for dispute resolution on May 3, 2022. I

therefore find that the tenants are within the time limits provided under the Act to dispute the 2 Month Notice.

When a tenant files an application to dispute a Notice to End Tenancy, the landlord bears the burden to prove the grounds for the 2 Month Notice. The landlord provided no documentary evidence and gave brief testimony about the circumstances leading to the issuance of the notice and their intention to reside in the rental unit. The landlord provided little cogent details about their plans. They gave vague testimony that they are residing in the same municipality where the rental unit is located but provided little information on their family composition or whether the intended move would require children to change school systems. The landlord claimed that the issuance of the 2 Month Notice was precipitated by the owners of their current residence intending to sell that property but provided no documentary evidence in support of their statement. It is reasonable to expect that there would be some written communication or information if the landlord's original intention, as they stated, was to sell the rental property and purchase their residence. The landlord submitted no documentary materials to support their brief testimony.

Based on the paucity of the landlord's evidence, I find the landlord has failed to satisfy the burden of proof on a balance of probabilities, and I therefore allow the tenants' application to cancel the 2 Month Notice.

As the tenants were successful in their application, I allow them to recover the filing fee from the landlord. As this tenancy is continuing, they may satisfy this monetary award by making a one-time deduction of \$100.00 from their next scheduled rent payment.

The parties have asked for guidance on the effect that a cancellation of a 2 Month Notice has on the tenants' right to compensation pursuant to section 51 of the Act. I note that the 2 Month Notice is cancelled and of no force or effect. Therefore, the tenants are not empowered to withhold rent and pursuant to the tenancy agreement would be obligated to pay rent as required in the usual manner.

Conclusion

The tenants are successful in their application. The 2 Month Notice is cancelled and of no further force or effect. This tenancy continues until ended in accordance with the *Act*.

The tenants are authorized to make a one-time deduction of \$100.00 from their next scheduled 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 *Residential Tenancy Act*.

Dated: September 6, 2022

Residential Tenancy Branch