



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

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

- the cancellation of the Two Month Notice to End Tenancy for Landlords' Use of Property (the "**Notice**") pursuant to section 49; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

Both tenants attended the hearing. Landlord JD attended on behalf of both landlords. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenants testified, and JD confirmed, that the tenants served the landlords with the notice of dispute resolution package and supporting documentary evidence. JD testified, and the tenants confirmed, that the landlords served the tenants with their documentary evidence. I find that all parties have been served with the required documents in accordance with the Act.

The tenants only submitted the first page of the Notice into evidence. The landlords did not submit any part of the Notice into evidence. During the course of the hearing, it became apparent that in order to assess the validity of the Notice, I would need to examine the second page. I permitted the tenants uploaded a copy of the second page of Notice into evidence.

Issues to be Decided

Are the tenants entitled to:

- 1) an order cancelling the Notice;
- 2) recover the filing fee?

If not, are the landlords entitled to an order of possession?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties agree that the landlords served the tenants with a copy of the Notice on April 30, 2022. It specified an effective date of July 1, 2022. The tenants testified that the landlords did not indicate the reason for ending the tenancy on the second page of the Notice. JD testified that she marked an "x" next to reason: "the rental unit will be occupied by the landlords' spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse."

The copy of the second page of the notice uploaded by the tenants shows that this option was not marked on the copy of the notice they received from the landlords. The area where the "x" would have been marked does not appear to have been altered by the tenants.

JD testified that she filled out the notice form in duplicate and retained one of these copies for her records while posting the other copy on the door of the rental unit.

Additionally, the Notice served by the landlord is a version of the Residential Tenancy Branch (the "**RTB**") two months notice to end tenancy form which is at least six years out of date. It is only two pages long (whereas the current version is four pages long) and lists a web site address for the RTB which is no longer valid.

Analysis

Section 49 of the Act permits a landlord to end a tenancy for a landlord's use of the property. It, in part, states:

Landlord's notice: landlord's use of property

49(3) 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.

[...]

(7) A notice under this section must comply with section 52 [*form and content of notice to end tenancy*] and, in the case of a notice under subsection (5), must contain the name and address of the purchaser who asked the landlord to give the notice.

Section 52 of the Act states:

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must [...]

- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,
[...]
- (e) when given by a landlord, be in the approved form.

The Notice was not in the approved form. The form of notice used by the landlords is several years outstand and contains substantially different information from the current two month notice to end tenancy form.

Additionally, based on the photograph of the second page of the Notice entered into evidence, I find that the Notice received by the tenants does not specify the reason for ending the tenancy. I find it more likely than not that the landlords neglected to mark the reason on the copy they provided to the tenants, while remembering to mark it off on their own copy.

For these reasons, I find that the Notice is invalid and unenforceable. I order it cancelled on that basis.

I note that I make no findings on the landlords' motives for issuing the Notice or whether this was done in good faith. It is not necessary for me to do this, as, even if the Notice was issued in good faith, the Notice would still need to be cancelled due to its technical deficiencies.

Pursuant to section 72(1) of the Act, as the tenants has been successful in the application, they may recover the filing fee from the landlords.

Pursuant to section 72(2) of the Act, the tenants may deduct \$100 from one future month's rent in satisfaction of this amount.

Conclusion

The tenants are successful in their application. The Notice is cancelled and of no force or effect. The tenancy shall continue.

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 20, 2022

Residential Tenancy Branch