



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNL, FFT**

Introduction

This hearing dealt with an application by the tenants made on May 17, 2022 pursuant to the *Residential Tenancy Act* ("Act") for:

- an order to cancel the landlord's Two Month Notice to End Tenancy (the "*Notice*") pursuant to section 49; and
- reimbursement of the filing fee pursuant to section 72.

The landlord, J.D. attended the hearing. The tenants, D.F. and S.C. attended the hearing. Both the landlord and the tenants provided a solemn affirmation at the beginning of the hearing.

The tenants confirmed that they were personally served with the *Notice* dated April 30, 2022, and also received the landlord's materials in response to the dispute notice. The landlord confirmed receipt of the dispute notice and of the tenants' materials. Service for both parties complies with sections 88 and 89 of the Act.

Issue(s) to be Decided

1. Is the *Two Month Notice to End Tenancy* valid and enforceable against the tenants?
2. Are the tenants entitled to reimbursement for filing fees?

Background and Evidence

The rental unit is one half of a duplex (the "residential property"). Each unit has a separate address.

Tenants D.F., S.C., and a third individual (who is not a party to this application) entered into a tenancy agreement to rent the rental unit from its prior owner starting July 1, 2018. The third individual vacated the rental unit and shortly after tenant S.H. moved in. On December 14, 2020, D.F., S.C., and S.H. entered into a new tenancy agreement with the prior owner that was backdated to October 2020.

In January 2021, the landlord purchased the residential property from the prior owner and took over the tenancy agreement.

Current rent is \$1639.25 per month. The landlord holds a \$787.50 security deposit, and a \$787.50 pet deposit in trust for the tenants. The tenants currently occupy the rental unit.

The tenants submitted a copy of the *Notice* into evidence. The copy provided did not indicate the reason for the *Notice* being served. The landlord testified that she indicated on the *Notice* the reason as “a close family member intends to occupy the rental unit”. She did not provide a copy of the *Notice* in her evidence package showing the reason for ending the tenancy.

Landlord's Evidence

The landlord testified that she initially planned to convert the entire residential property into a daycare with their son, however the city denied her application to rezone the property. She therefore changed their plans and decided to convert her son's residence into a daycare, her son would move into one of the units of the residential property, and her parents would move into the other unit.

Tenants' Evidence

The tenants argued that the reasons for ending the tenancy were not provided on the *Notice* they received and that it should be invalid as a result. They provided the version they received in evidence. The tenants stated that they did not believe that the landlord was being forthright regarding her reasons for ending the tenancy as they had been given many different reasons by the landlord. They testified that they did not know that the landlord's reason for ending the tenancy was so that her son and her landlord's parents could occupy the residential property. S.C. stated that she understood the tenancy was ended so that her son could move into the rental unit and so that the landlord could run a daycare on the residential property.

In their documentary evidence Package, the tenant submitted evidence of searches they did to locate an application for a business permit for the rental unit. The search showed no outstanding applications. Additionally, they submitted Facebook posts that they stated were written by the landlord's son and were referring to a daycare. Tenant D.F. argued that they had seen no proof of the landlord's parents' intention to move into the rental unit.

Analysis

The only *Notice* provided as part of the hearing package was provided by the tenants and the relevant portion is reproduced below, and is clearly not filled out:

REASONS FOR THIS 2 MONTH NOTICE TO END THE TENANCY (put an "x" in all the boxes that apply)	
<input type="checkbox"/>	The rental unit will be occupied by the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse
<input type="checkbox"/>	A family corporation owns the rental unit and it will be occupied by an individual who owns, or whose close family members own, all the voting shares
<input type="checkbox"/>	All of the conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit
<input type="checkbox"/>	The landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant
<input type="checkbox"/>	The landlord intends to convert the residential property to strata lots or a not-for-profit housing cooperative
<input type="checkbox"/>	The landlord intends to convert the rental unit for use by a caretaker, manager or superintendent of the residential property
<input type="checkbox"/>	The landlord has all necessary permits and approvals required by law to convert the rental unit to a non-residential use
<input type="checkbox"/>	The tenant no longer qualifies for the subsidized rental unit

Additionally, the *Notice* served on the tenants was not in the current approved form as required by section 52 of the Act, which, states in part:

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.

Additionally, based on the document submitted into evidence, I find that the landlord failed to state or otherwise indicate the reason for ending the tenancy on the *Notice*. The landlord did not check off any of the boxes on the *Notice* which state the ground for ending the tenancy or include a written description of the ground.

It is essential that a landlord indicate which of the grounds are being relied on, as it informs the tenants about the case they need to meet and to what evidence they may need should they decide to dispute the *Notice*. I also note that the *Notice* entered is not

in the approved form. The landlord used an older version of the form which is two pages shorter than the current form.

Section 68 of the Act allows me to amend the *Notice*, but only if I am satisfied that:

- (a) the person receiving the notice knew, or should have known, the information that was omitted from the notice, and
- (b) in the circumstances, it is reasonable to amend the notice.

In this case, failure to include the grounds contributed to uncertainty of the tenants about the reason the tenancy was ending.

Tenant S.C. stated that she understood the tenancy was ending for the reason of creating a daycare within the subject rental property and moving the landlord's son into the residence. She also stated that the landlord had given them a number of different reasons for ending the tenancy and the reasons changed over time. Therefore, she did not believe the landlord was truthful about using the property for any of the stated reasons.

The tenants' understanding of the grounds for the *Notice* is corroborated by the material they provided for the hearing, including the business permit search for the rental unit and further evidence that the landlord's son intended to run a daycare in the unit.

I consider the tenants statements relevant in considering whether the tenants knew or should have known the information that was missing from the *Notice*. It is clear to me on the evidence that they were confused about the reason and were therefore denied the opportunity to adequately respond to the reasons in their dispute application. They did not know, and could not reasonably have known, the missing information and, in these circumstances, it would not be reasonable to amend the *Notice* to include the missing information.

I specifically decline to make a finding as to whether the landlord was acting in good faith in ending the tenancy because it is unnecessary for me to do so. The *Notice* does not comply with section 52(d) or (e) of the Act and is therefore invalid. I order it cancelled on this basis.

Per section 72(1) of the Act, as the tenants have been successful in their application, I order that the landlord reimburse them their filing fee (\$100). Per section 72(2) of the

Act, I order that the tenants may withhold \$100 from one future month's rent, in satisfaction of this amount.

Conclusion

The *Notice* is cancelled. 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 14, 2022

Residential Tenancy Branch