



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, CNL, MNDCT, FFT

Introduction

This hearing was convened pursuant to the Tenants' Application for Dispute Resolution made on August 12, 2022. The Tenants applied for the following relief pursuant to the Residential Tenancy Act (the Act):

- an order that the Landlord comply with the Act, Residential Tenancy Regulation (the Regulations), and/or the tenancy agreement;
- an order cancelling a Two Month Notice to End Tenancy for Landlord's Use of Property;
- a monetary order for compensation for monetary loss or other money owed; and
- an order granting recovery of the filing fee.

SJO attended the hearing on behalf of the Tenants. The Landlord attended the hearing on her own behalf and was accompanied by KL, her spouse. All in attendance provided a solemn affirmation at the beginning of the hearing.

On behalf of the Tenants, SJO testified the Landlord was served with the Notice of Dispute Resolution Proceeding by registered mail on September 2, 2022. The Landlord acknowledged receipt.

The Landlord testified that documentary evidence in response to the application was served on the Tenants by registered mail on September 23, 2022. SJO acknowledged receipt.

No issues were raised during the hearing with respect to service or receipt of the above documents. The parties were in attendance and were prepared to proceed. Therefore, pursuant to section 71 of the Act, I find the above documents were sufficiently served for the purposes of the Act.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure, and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

Residential Tenancy Branch Rule of Procedure 2.3 permits an arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. The most important issue to address is whether the tenancy will continue, which is not related to the Tenants' monetary claim or their request for an order that the Landlord comply with the Act, Regulations, and/or the tenancy agreement. Therefore, I find it appropriate to exercise my discretion to dismiss all but the request for an order cancelling the Two Month Notice and to recover the filing fee, with leave to reapply.

Issues to be Decided

1. Are the Tenants entitled to an order cancelling a Two Month Notice to End Tenancy for Landlord's Use of Property?
2. Are the Tenants entitled to recover the filing fee?

Background and Evidence

The parties agreed that a fixed term tenancy began on August 15, 2021 and ended on August 14, 2022. Since that date, the tenancy has continued on a month-to-month basis. Rent of \$2,400.00 per month is due on the first day of each month. The Tenants paid a security deposit of \$1,200.00, which the Landlord holds. A copy of the tenancy agreement, signed on August 11, 2021, was submitted into evidence.

During the hearing, the Landlord testified that she had no intention to evict the Tenants. Both parties agreed the Landlord did not issue a Two Month Notice to End Tenancy for Landlord's Use of Property. The Tenants continue to occupy the rental unit on a month-to-month basis.

Analysis

In light of the oral and documentary evidence submitted by the parties, and on a balance of probabilities, I find:

Section 52 of the Act confirms that in order to be effective, a notice to end tenancy given by a landlord must be signed and dated, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

In this case, based on the undisputed testimony of SJO and the Landlord, I find the Landlord did not issue a Two Month Notice to End Tenancy for Landlord's Use of Property in the approved or any form. The parties agreed, and I accept, that whatever uncertainty arose in the communications between them has been resolved, and that the tenancy continues on a month-to-month basis.

Considering the above, I find the Tenants' request to dispute a Two Month Notice to End Tenancy for Landlord's Use of Property was unnecessary and is dismissed without leave to reapply. Accordingly, having been unsuccessful, I find the Tenants are not entitled to recover the filing fee.

Conclusion

The Tenants' request to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property is dismissed without leave to reapply.

The Tenants' request to recover the filing fee is dismissed without leave to reapply.

The Tenants' requests for orders that the Landlord comply with the Act, Regulations, and/or the tenancy agreement, and for compensation for monetary loss or other money owed, are dismissed with leave to reapply.

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: October 7, 2022

Residential Tenancy Branch