



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNL, FF

Introduction

This hearing dealt with the tenants' application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act) for an order cancelling the Two Month Notice to End Tenancy for Landlord's Use of Property (Notice/2 Month Notice) issued by the landlord and recovery of the filing fee.

The tenants and the landlord attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters-

The landlord confirmed that they received the tenants' application and evidence. The landlord filed evidence and said they served the evidence to tenant, TW, by registered mail. The tenants said they did not receive the evidence. TW said they remembered

receiving a notice card, but they did not have their identification with them when trying to collect mail. As the landlord did not serve each tenant individually with their evidence, I exclude the landlord's evidence from consideration in making this Decision.

As another preliminary issue, the landlord's evidence contained another 2 Month Notice, which was dated February 28, 2023, for an effective, move-out date of April 30, 2023, listing the same two reasons as the original Notice served to the tenants.

The landlord said that second 2 Month Notice was served because the tenants claimed they only received 2 pages of the 4 page document. The landlord submitted that they served that new 2 Month Notice on February 28, 2023; however, their documentary evidence showed the Notice was served on May 15, 2023. I find this evidence inconsistent.

In this Decision, I will incorporate the 2 Notices, as I find this evidence was included in the landlord's response to the tenants' application.

Apart from that, the tenants said although they received a copy of a copy of the 2nd Notice, the copy they received was fuzzy, unclear and was not legible.

Issue(s) to be Decided

- Should the Notices be cancelled?
- Are the tenants entitled to recovery of the filing fee?

Background and Evidence

The tenant submitted that the tenancy began on June 1, 2017. Filed in evidence was a copy of the tenancy agreement.

The tenants requested cancellation of the 2 Month Notice. In their application, the tenants wrote the following:

Reasons for disputing 1. Wrong notice given: landlord came to view needed repairs, told us verbally that we would have to move out for repairs to be done. When asked for written notice, landlords said uncle would be moving in and that he is one of the owners. 2. Improper notice- only two of four pages served to tenant. 3. Landlord indicated on notice both that owner or close relative was

moving in and also that owner is a family corporation and voting shareholder is moving in

Pursuant to section 7.18 of the Rules, the landlords proceeded first in the hearing to give evidence to support the Notice.

The Notice was dated January 28, 2023, signed by the landlord and listed an effective move-out date of March 31, 2023. The 2nd Notice was datedj 28, 2023, with an effective move-out date of April 30, 2023. Both Notices listed two reasons for ending the tenancy. The first reason was that the landlord or spouse will occupy the rental unit.

The second reason is that the landlord is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

The landlord on the written tenancy agreement and the 2 Month Notice is an individual name.

When asked to explain whether the landlord or their spouse intended to occupy the rental unit, the landlord said that was not the reason. The landlord said they were the landlord, but the home, formerly their grandmother's home, was owned by the landlord's father, aunt and uncle and that they were responsible for handling the rental of the home. The intention behind the Notice was for their uncle to move into the rental unit.

To support the 2nd reason on the Notice, the landlord said that the registered owners of the home were their father, aunt and uncle.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

When a tenant disputes a Two Month Notice, the landlord bears the onus to prove that the Notice is valid, was issued in good faith, and should be upheld.

Section 49(7) of the Act states "a notice under this section **must** comply with section 52 [*form and content of notice to end tenancy*]".

Section 52(e) requires in order to be effective, a notice to end a tenancy must be in writing and must be in the approved form, if given by a landlord.

In this case, the landlord was instructed to mark one reason for giving the tenant the Notice, and they instead marked two reasons. I find these reasons are exclusive and inconsistent of each other.

I therefore find the landlord submitted insufficient evidence that the tenants were served with a notice to end tenancy with the required content.

Tenancy Policy Guideline 18 states that an arbitrator may not amend a form which does not contain the required information.

Therefore, I find the Two Month Notices, dated January 28, 2023 and February 28, 2023, are not valid as they have been completed incorrectly.

As a result of the above, I **ORDER** both the Two Month Notices in this matter are **cancelled** and are of **no force or effect**.

I **ORDER** the tenancy to continue until ended in accordance with the *Act*.

As the tenants' application was successful, I grant the tenants the recovery of the cost of the filing fee under section 72 of the Act in the amount of **\$100**. Pursuant to sections 67 and 72 of the Act, I grant the tenants a one-time rent reduction of **\$100** from a future month's rent in full satisfaction of the recovery of the cost of the filing fee.

Conclusion

The tenants' application is successful. The Two Month Notices issued by the landlord are ordered cancelled and are of no force or effect.

The tenancy shall continue until ended in accordance with the Act. The tenants have been granted a one-time rent reduction of \$100 from a future month's rent in full satisfaction of the recovery of the cost of the filing fee.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: June 08, 2023