



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

LL: OPL

TT: CNL, LRE, FFT

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the Residential Tenancy Act (the “Act”).

The Landlord’s Application for Dispute Resolution was made on April 29, 2023 (the “Landlord’s Application”). The Landlord applied for the following relief, pursuant to the Act:

- an order of possession based on the Two Month Notice to End Tenancy for Landlord’s Use of the Property dated March 3, 2023 (the “Two Month Notice”).

The Tenants’ Application for Dispute Resolution was made on July 23, 2023 (the “Tenant’s’ Application”). The Tenants applied for the following relief, pursuant to the Act:

- an order cancelling the Two Month Notice;
- an order restricting the Landlord right to enter the rental unit;
- an order granting the recovery of the filing fee.

The Landlord’s Counsel R.G., the Tenants’ Counsel T.B. and the Tenant P.C. attended the hearing at the appointed date and time. At the start of the hearing, the parties confirmed service and receipt of their respective Applications and evidence. As there were no issues raised relating to service, I find these documents were sufficiently served pursuant to Section 71 of the *Act*.

Preliminary Matters

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, an Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important issue to determine is whether or not the tenancy is ending based on the Two Month Notice.

The Tenant's request for an order restricting the Landlord's right to enter the rental unit is dismissed with leave to reapply.

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. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Landlord entitled to an order of possession based on the Two Month Notice, pursuant to Section 49 and 55 of the Act?
2. Are the Tenants entitled to an order cancelling the Two Month Notice, pursuant to Section 49 of the Act?
3. Are the Tenants entitled to an order granting recovery of the filing fee, pursuant to Section 72 of the Act?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on April 4, 2021. The Tenants are required to pay rent in the amount of \$2,100.00 which is due to the Landlord on the first day of each month. The Tenants paid a security deposit in the amount of \$1,050.00. The Tenants continue to occupy the rental unit.

The Landlord's Counsel stated that the Landlord served the Tenants with the Two Month Notice in person hand to hand, as well as by Registered Mail on March 3, 2023. The Landlords' reason for ending the tenancy on the Two Month Notice is;

"The rental unit will be occupied by the Landlord or the Landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse)."

The Landlord's Counsel stated that the Landlord intends to relocate to B.C. for a change of career and has enrolled in a Builders Course which begins in the fall of this year. The Landlord's Counsel stated that the Landlord's mother will also reside in the rental unit with the Landlord. The Landlord's Counsel stated that the Landlord plans to reside in the rental unit indefinitely and understands the requirements to occupy the rental unit in accordance with the Act. The Landlord's Counsel stated that the Landlord also understands the consequences for not accomplishing the stated purpose of the Two Month Notice and maintains that they honest intend on occupying the rental unit. The Landlord provided an affidavit in support.

The Tenants confirmed having received the Two Month Notice on March 3, 2023 and submitted their Application to cancel the Two Month Notice on July 23, 2023. The Tenants' Counsel stated that the Tenants were self represented and did not understand that they were required to dispute the Two Month Notice within 15 days after receiving it.

The Tenants' Counsel stated that the Two Month Notice was served as the Tenants did not consent to a rent increase above the allowable amount. The Tenants' Counsel stated that the Landlord offered to mutually agree to end the tenancy, which was declined by the Tenants. The Tenants' Counsel stated that the Two Month Notice was served to the Tenants soon thereafter. The Tenants' Counsel stated that the Landlord just recently enrolled in the Builder's Program, proving that this was an after thought. The Tenants' Counsel stated that a portion of the rental property became vacant and was not offered to the Tenants for rent. As such, the Tenants' Counsel stated that the Two Month Notice was served in bad faith.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Subsection 49(3) of the Act sets out that a landlord may end a tenancy in respect of a rental unit where the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. The Landlords' Counsel stated that the Landlord and his mother intend on occupying the rental unit, therefore require vacant possession of the rental unit.

The Landlord's Counsel stated that the Landlord served the Tenants in person with the Two Month Notice on March 3, 2023. The Tenant confirmed having received the notice on March 3, 2023. I find the Two Month Notice was sufficiently served pursuant to Section 88 of the Act.

According to subsection 49(8) of the Act, a tenant may dispute a notice to end tenancy for landlord's use by making an application for dispute resolution within fifteen days after the date the tenant receives the notice.

According to subsection 49(9) of the Act, if a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date.

In this case, the Tenant testified that she received the Two Month Notice on March 3, 2023. Therefore, the Tenants had until March 18, 2023 to make an Application for dispute resolution, or are conclusively presumed to have accepted the tenancy has ended on the effective date of the Two Month Notice.

I find that the Tenants did not apply for more time to dispute the Two Month Notice. Regardless, I find that the Tenants provided insufficient evidence to demonstrate that they were unable to dispute the Two Month Notice within 15 days for reasons outside of their control. I find that the Two Month Notice clearly indicates that the top of the Notice that the Tenants have 15 Days to dispute the Two Month Notice. As the Tenants failed to take action until July 23, 2023 I find that this is far beyond the 15 days permitted under the Act.

As the Tenants did not apply to dispute the Two Month Notice in accordance with Section 49(8), I find that they are conclusively presumed to have accepted the end of the tenancy. I therefore dismiss the Tenants' Application without leave to reapply.

I find that the Two Month Notice complies with the requirements for form and content and I find that the Landlord has provided sufficient evidence to demonstrate that they intent to occupy the rental unit for their own use. I find that the Landlord is entitled to an

order of possession effective at 1:00PM on August 31, 2023, after service on the Tenants, pursuant to section 55 of the Act. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenants are cautioned that costs of such enforcement are recoverable from the Tenants.

The Landlord and the Tenants should be aware that if the Landlord fails to use the rental unit as stated above, then pursuant to section 51 of the Act, the Landlord may be subject to paying the Tenant the equivalent of 12 months' rent as a penalty.

Conclusion

The Tenants are conclusively presumed to have accept the end of the tenancy. The Landlord is entitled to an order of possession effective at 1:00PM on August 31, 2023.

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: August 22, 2023

Residential Tenancy Branch