

DECISION

Introduction

This hearing dealt with the Tenants' Application for Dispute Resolution under the *Residential Tenancy Act* (Act) for:

- a Monetary Order for damages under section 67 of the Act
- cancellation of a Two Month Notice to End Tenancy for Landlord's Use (2 Month Notice 1) dated September 28, 2023 under section 49 of the Act
- cancellation of a Two Month Notice to End Tenancy Due to Purchase (2 Month Notice 2) dated December 11, 2023 under section 49 of the Act
- authorization to recover the filing fee for this application from the Landlord for both filings under section 72 of the Act

Preliminary Issue

Another party was named as landlord for this application. The named individual is not a landlord. The named individual has a purchase agreement with the current Landlord that becomes effective March 1, 2024. I have amended the application to remove that party.

Service

The Landlords acknowledged receipt of the Tenants' Dispute Notices and evidence.

The Landlord did not provide proof of service in evidence showing that they served the Tenants with their evidence package. Therefore I will not consider the Landlord's evidence in this dispute.

Issues to be Decided

Is 2 Month Notice 2 valid? Is the Landlord entitled to an Order of Possession?

Are the Tenants entitled to a Monetary Order for legal fees?

Are the Tenants entitled to recover the filing fee for this application?

Background and Evidence

The tenancy commenced on January 15, 2019. Rent was \$3,105.00 per month due on the first of the month. A security deposit of \$1,500.00 was taken. The Tenants still occupy the rental unit.

The parties agree that 2 Month Notice 1 is invalid as it was not issued for the correct reason.

The Landlord testified that they gave notice to the Tenants as the property is being sold and the new owner requested that the Landlord give the Tenants notice as they wished to occupy the property. The buyer's request to the seller pursuant to section 49 of the Act was provided as evidence.

The buyer of the rental unit did not attend the hearing. The Landlord stated that the purchaser, which is a corporation, intends to occupy the rental unit. The incorporation documents were provided in evidence. The incorporation documents list one individual as the sole shareholder of the corporation. The Landlord testified that the sole shareholder intends to occupy the residence with their mother.

The Tenants testified that they do not believe the purchaser is acting in good faith. The Tenants pointed to a previous decision of the RTB related to the same property and the same parties where an arbitrator found that the Landlord was not acting in good faith issuing a Two Month Notice to End Tenancy for Landlords' Use and cancelled the notice.

The Tenants also took the position that the 2 Month Notice 2 was not valid as the conditions of sale for the property were not all satisfied. Therefore it was not an unconditional sale. The home sale documents were provided in evidence.

Analysis

Is the Two Month Notice Valid and are the Landlords entitled to an Order of Possession?

2 Month Notice 1 was cancelled based on the agreements of the parties. I find that the Tenant is entitled to recover the \$100.00 filing fee for this notice as the Tenant was entitled to dispute a defective notice.

I find that the sale of the rental property was unconditional. The only term outstanding was possession, which is set for March 1, 2024.

I also find that the Landlords have failed to establish that the purchasers of the property intend to occupy the rental unit in good faith. Other than the purchase agreement and the incorporation documents for the company, I have no evidence that the purchaser intends to occupy the rental unit in good faith. The purchaser did not appear at the hearing. The purchaser did not provide the Landlord with any evidence to show they would occupy the rental unit, such as an affidavit. If the purchaser was motivated to purchase the rental unit for their own use, the purchaser would surely be motivated to assist the seller and provide evidence for the hearing. As the onus is on the Landlord, I find that they have not satisfied their burden to establish that the purchaser of the property intends to occupy it. The Tenants' application to cancel 2 Month Notice 2 is granted.

Are the Tenants Entitled to Recover the Filing Fee for Their Application?

As the Tenants were successful in both their applications they are entitled to recover the \$200.00 filing fee for both applications.

Conclusion

The Two Month Notice is cancelled and the tenancy shall continue until it is ended in accordance with the Act.

The Tenants are granted a Monetary Order in the amount of \$200.00 as compensation under section 72 of the Act.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: January 31, 2024

Residential Tenancy Branch