



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNL

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants filed under the Residential Tenancy Act (the “Act”), to cancel Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Notice”) issued on July 13, 2017.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Should the Notice issued be cancelled?

Background and Evidence

The tenancy began approximately twelve years ago. Rent in the amount of \$1,400.00 was payable on the first of each month. The tenants paid a security deposit of \$600.00.

The parties agreed that the Notice was served on the tenants indicating that the tenants are required to vacate the rental unit on September 30, 2017.

The reason stated in the Notice was that:

- 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 testified that they currently rent and they were served by their landlord with a notice to end tenancy effective September 30, 2017. The landlord stated that as a result of that notice they want to move back into the property they own. The landlord stated that their landlord agreed to extend their effective vacancy date to October 15, 2017, due to the hearing.

The landlord testified that they are not willing to extend the effective date in the Notice. The landlord stated that they are unsure if any rent has been paid for October 2017, as they have not checked.

The tenants testified that they were told the Notice was not valid. The tenants testified that they have personal health issues that should be considered. The tenants indicated rent for October was paid.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

How to end a tenancy is defined in Part 4 of the Act. Section 49(1) of the Act a landlord may end a tenancy by giving notice to end the tenancy.

I have reviewed the Notice and the Notice complies with section 52 of the Act. Although I note the last name of the tenants is spelt wrong in the Notice, I find it reasonable to amend that error, pursuant to section 68 of the Act, as the tenants knew the Notice was intended for them and it was disputed.

I have considered all of the written and oral submissions submitted at this hearing, I find that the landlord provided sufficient evidence to show that:

- 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)

In this case, I accept the evidence of the landlord that they want to move into the property as they were served with a notice to end tenancy where they are currently living. This was not disputed by the tenants. I find the Notice issued on July 13, 2017, has been proven by the landlord and is valid and enforceable.

While I accept the tenants may have health issues and other personal circumstances, the Act does not allow me to take into consideration their personal circumstances as that would be highly prejudicial to the landlord. The landlord was not agreeable to extend the effective date of

the Notice. Therefore, I find the tenancy legally ended on September 30, 2017, and the tenants are overholding the premise.

Further, while the issue of rent was raised, I find if rent was paid by the tenants then they are entitled to the rent being refunded in the prorated amount. As the landlord is entitled to prorated rent for the days the tenants overhold the rental unit. Furthermore, the tenants have not received from the landlord compensation for receiving the Notice in an amount that is the equivalent of one month rent from the landlord. Should the landlord fail to return refunded rent or compensation, the tenants may make an application for dispute resolution seeking monetary compensation.

Based on the above, I dismiss the tenants' application to cancel the Notice issued on July 13, 2017. The tenancy legally ended on September 30, 2017, in accordance with the Act. The tenants are now overholding the premises.

Since the landlord is not agreeable to extend the effective date in the Notice, and the tenancy has legally ended, I find the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenants. This order may be filed in Supreme Court for enforcement. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

Conclusion

The tenants' application to cancel the Notice, issued on July 13, 2017, is dismissed. The landlord is granted an order of possession.

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 03, 2017

Residential Tenancy Branch