



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to cancel a Two Month Notice to End Tenancy for Landlord's Use dated October 20, 2020 ("Two Month Notice"), and to recover the \$100.00 cost of their Application filing fee.

The Tenants, C.H. and J.H., appeared at the teleconference hearing, but no one attended on behalf of the Landlords. The teleconference phone line remained open for over ten minutes and was monitored throughout this time. The only person to call into the hearing were the Tenants, who indicated that they were ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only persons on the call, besides me, were the Tenants.

The Tenants said that the Parties have resolved this matter - at least in the short term. They said that the Landlord, B.P., texted the Tenant, C.H., to say that it is okay for the Tenants to stay in the residential property, and in effect, cancelling the Two Month Notice. The Tenants said that the Landlords told them that they would not be attending the hearing, because they are no longer seeking an order of possession for the rental unit at this time.

As the Landlords did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Tenants testified that they served the Landlords with the Notice of Hearing documents in person, a few days after the Tenants received the Two Month Notice – on approximately November 1, 2020. I find that the Landlords were deemed served with the Notice of Hearing documents in accordance with the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Tenants in the absence of the Landlords.

Preliminary and Procedural Matters

The Tenants provided their email address in the Application and the Landlord, D.P.'s, email address in the hearing. The Tenants confirmed their understanding that the Decision would be emailed to these addresses and mailed to the Landlord, B.P., at the Landlords' address for service.

Section 55 of the Act states that if a tenant's application to cancel a notice to end tenancy is dismissed, and I am satisfied that the notice to end tenancy complies with the requirements under section 52, I must grant the landlord an order of possession.

Issue(s) to be Decided

- Should the Two Month Notice be cancelled or confirmed?
- Are the Landlords entitled to an order of possession?
- Are the Tenants entitled to recovery of the \$100.00 Application filing fee?

Background and Evidence

The Tenants submitted a copy of the tenancy agreement, which states that the fixed term tenancy began on July 1, 2019, ran to July 1, 2020, and then operated on a month-to-month basis. The tenancy agreement states that the Tenants are required to pay the Landlords a monthly rent of \$1,500.00, due on the first day of each month. It also states that the Tenants paid the Landlords a security deposit of \$750.00, and no pet damage deposit.

The Tenants submitted a copy of the first page of the Two Month Notice; however, no one submitted a copy of the second page, which includes evidence about service of the Two Month Notice and the grounds on which it was issued.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

The onus to prove their case is on the person making the claim. In most cases, this is the person who applies for dispute resolution. However, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

In this case, the Landlords did not provide evidence of the second page of the Two Month Notice, and they did not attend the hearing to present the merits of their case.

Section 52 of the Act requires a notice to end tenancy to contain specified content and be in the approved form. Section 52 states:

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,
 - (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
- (e) when given by a landlord, be in the approved form.

As there is insufficient evidence before me regarding service of the Two Month Notice or the grounds for ending the tenancy, I find that the Two Month Notice is inconsistent with section 52 of the Act. Accordingly, I find that insufficient evidence was presented by the Landlords in relation to the validity of the Two Month Notice; and therefore, I cancel the Two Month Notice dated October 20, 2020. This Notice is of no force or effect. I find that the tenancy continues until ended in accordance with the Act.

Further, the Tenants are awarded recovery of the \$100.00 Application filing fee, pursuant to section 72 of the Act. The Tenants are authorized to deduct \$100.00 from one upcoming rental payment due in full satisfaction with this award.

Conclusion

The Tenants are successful in their Application for an order cancelling the Two Month Notice. The Landlords did not attend the hearing to present evidence of the merits of their case. Therefore, I cancel the Two Month Notice dated October 20, 2020; the Two Month Notice is void and unenforceable.

The Tenants are awarded recovery of their \$100.00 Application filing fee, pursuant to section 72 of the Act. The Tenants are authorized to deduct \$100.00 from one upcoming rental payment owing to the Landlords in complete satisfaction of this award.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: January 18, 2021

Residential Tenancy Branch