



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the "2 Month Notice") pursuant to section 49;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Tenant RC (the "tenant") and the landlord along with the landlord's agent KP (collectively the "landlord") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that his daughter had authority to speak on his behalf.

The landlord confirmed receipt of the tenants' application for dispute resolution. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants' application.

Issue(s) to be Decided

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

As per the testimony of the parties, the tenancy began over twenty five years ago on a month-to-month basis. Rent in the amount of \$2,050.00 is payable on the first of each month. The tenants remitted a security deposit at the start of the tenancy. The tenants continue to reside in the rental unit.

A Notice of Rent Increase was issued to the tenants on November 26, 2015. The tenants filed an application to dispute the rent increase and a hearing was held by the Residential Tenancy Branch (the "Branch"). A decision, rendered February 4, 2016

deemed the notice was of no force and effect. For ease of reference, the file number for this hearing is set out on the front page of this decision.

On February 22, 2016 the landlord issued a 2 Month Notice to the tenants. This 2 Month Notice was addressed in a previous decision issued by the Branch on April 15, 2016. The landlord did not participate in this hearing. The Arbitrator in this hearing determined that the landlord did not meet the burden of proof to establish the notice was valid and upheld the tenants application to dismiss the 2 Month Notice. The file number for this hearing is listed on the front page of this decision.

The tenants confirmed receipt of the latest 2 Month Notice, dated June 27, 2016 by way of placement in the mailbox where the tenants reside. In accordance with sections 88 and 90 of the *Act*, I find that the tenants were deemed served with the landlord's 2 Month Notice on June 30, 2016, three days after its posting. The 2 Month Notice indicates that the rental unit will be occupied by the landlord or the landlord's close family member.

Landlord

The landlord explained that he owns three duplexes, one of which he resides in and one in which the tenants reside in. The landlord testified that at the end of last year he noticed a leak in the roof of his unit. In May of 2016, the landlord contacted a contractor to examine the leak. The landlord understands that significant work is needed to repair the leak. The landlord identified himself as a senior and testified that he does not want to live amongst the repair work. Instead, the landlord seeks to live in the tenants' rental unit.

Tenant

It is the tenant's position that the 2 Month Notice is a result of the dispute over the rent increase. The tenant testified that on March 5, 2016, after the rent increase was deemed of no effect but before the first 2 Month Notice was issued, the landlord told her she would have to move if she did not pay the rent he demanded.

The tenant testified that she was unaware that the landlord had a problem with his roof. The landlord had not communicated this to her prior to the hearing. The tenant indicated that the landlord had recent renovations performed to his unit and did not vacate during that time.

Landlord reply

The landlord could not recall telling the tenant she had to vacate if she did not pay the rent he demanded. The landlord acknowledged he had lived through recent renovations, but these were not extensive renovations.

Analysis

The *Act* allows a landlord to end a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

The tenant questioned the good faith of the landlord suggesting the 2 Month Notice was a direct result of the rent increase dispute. When the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to use the rental unit for the purposes stated on the 2 Month Notice. The landlord testified that the rental unit was required for his use due to a leak in his unit. The landlord provided no written documentary evidence indicating his roof was leaking or specifically what repair work was needed. I find it more probable the landlord sought to end the twenty five year tenancy as a result of the rent increase dispute over landlord use.

Based on these reasons I find the landlord has not acted in good faith in issuing the 2 Month Notice. Accordingly, I uphold the tenants' application to cancel the 2 Month Notice.

As the tenants were successful in this application, I find that the tenants are entitled to recover the \$100.00 filing fee paid for the application.

Conclusion

The tenants' application to cancel the 2 Month Notice is upheld.

The tenants are entitled to deduct \$100.00 from future rent in satisfaction of the monetary award to recover 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*.

Dated: August 19, 2016

Residential Tenancy Branch