



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNC MNDC FF

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, received at the Residential Tenancy Branch on June 12, 2017 (the "Application"). The Tenants applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a Two Month Notice to End Tenancy for Landlord's Use of Property, dated May 30, 2017, with an effective date of July 31, 2017 (the "Two Month Notice");
- a monetary order for money owed or compensation for damage or loss; and
- an order granting recovery of the filing fee.

The Tenants attended the hearing on their own behalves. The Landlord attended the hearing on his own behalf and was assisted by J.N. All parties giving testimony provided a solemn affirmation.

On behalf of the Tenants, C.F. testified that the Tenants' Application package was served on the Landlord, in person, on June 16, 2016. The Landlord signed a statement confirming receipt on that date. I find the Landlord received the Application package on June 16, 2017.

The Tenants also submitted two additional documentary evidence packages, received at the Residential Tenancy Branch on July 25 and July 28, 2017, respectively. According to C.F., the first of these documentary evidence packages was served on the Landlord on July 28, 2017. The second documentary evidence packages was served on the Landlord on August 3, 2017.

On behalf of the Landlord, J.M. objected to the inclusion of the second documentary evidence package. He submitted it was irrelevant to the issue of the Two Month Notice and was served late, contrary to Rule of Procedure 3.14. On behalf of the Tenants,

C.F. submitted the evidence, which described an incident on July 28, 2017, could not have been served earlier. Considering the submissions of the parties, I find the documentary evidence package received at the Residential Tenancy Branch on July 28, 2017, was served contrary to Rule of Procedure 3.14. As a result, it has not been considered in making a Decision.

In response to the Tenants' Application, the Landlord served three documentary evidence packages on the Tenants on July 21, July 30, and August 3, 2017. These were served by registered mail and on the Tenants' door. The Tenants acknowledged receipt. I find the Tenants were sufficiently served with the Landlord's documentary evidence, in accordance with section 71 of the *Act*.

No further issues were raised with respect the documents served by the parties. The parties were provided with the full opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer to only the relevant facts and issues in this Decision.

Preliminary and Procedural Matters

The Tenants sought to cancel the Two Month Notice and to obtain a monetary award for loss of quiet enjoyment. Rule 2.3 of the Rules of Procedure permits an arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. The most important issue to address is whether or not the tenancy will continue. Accordingly, I find it appropriate to exercise my discretion to dismiss all but the Tenants' Application to cancel the Two Month Notice and to recover the filing fee paid to make the Application. The Tenants are granted leave to reapply for the monetary relief sought at a later date.

Background and Evidence

The Tenants submitted a copy of the tenancy agreement between the parties into evidence. It confirmed the fixed-term tenancy commenced on July 1, 2016. It appears it was to end on March 31, 2017, but continued thereafter on a month-to-month basis. Rent in the amount of \$980.00 per month is due on the first day of each month. The Tenants paid a security deposit of \$500.00.

On May 30, 2017, the Landlord issued the Two Month Notice. The Tenants' Application acknowledged receipt on that date. The Two Month Notice was issued on the following basis:

The landlord intends to convert the rental unit for use by a caretaker, manager or superintendent of the residential property.

[Reproduced as written.]

The Landlord testified he is currently 59 years old and works training horses on his property. He stated he has a number of health issues that impact his ability to do the work. Health issues referred to by the Landlord included high blood pressure, an irregular heartbeat, arthritis, and stress. The Landlord also testified he experiences back, shoulder, and knee pain, having done physical work for more than 40 years. The Landlord submitted correspondence from health care providers in support. The Landlord testified is finding working on the property to be more difficult and would like to offer the rental unit for use by a caretaker on the property to assist. As an example of the difficulty he is having, he provided testimony regarding a recent incident that involved a number of horses on his property becoming entangled. He advised he was physically unable to deal with the situation and a horse died as a result. He suggested that having someone to assist on the property would be helpful in preventing this sort of unfortunate accident. Further, the Landlord advised that he has advertised for a caretaker but has not done so more recently pending the outcome of this hearing.

The Tenants put forward two primary bases for their assertion the Two Month Notice should be cancelled. First, the Tenants alleged the Two Month Notice was not issued by the Landlord in good faith. Several examples were provided. In December 2016, the Landlord told S.R. he intended to complete some renovations and that the Tenants would have to move. In March 2017, the Landlord removed some raised bed gardens that had been installed for their use. In May 2017, the Landlord tried to prevent the Tenants from allowing their cat to access the property. In addition, S.R. testified the Tenants had been approached by the Landlord, who wished to change the terms of the tenancy agreement. The Tenants submitted that the timing of the Two Month Notice, received after the above events, gives rise to bad faith on the part of the Landlord.

Second, while the Tenants acknowledge the Landlord may need some assistance, they submitted that the proposed caretaker is not for a residential property but for the Landlord's horse training business.

Analysis

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

Section 49 of the *Act* permits a landlord to end a tenancy when the landlord intends to convert the rental unit for use by a caretaker, manager or superintendent of the residential property. In this case, the Landlord testified he finds working on and maintaining the property more difficult due to his age and health concerns. He testified he wishes to provide the rental unit to a caretaker to assist. Accordingly, he issued the Two Month Notice. Based on the Tenants' acknowledgment, I find the Two Month Notice was received by the Tenants on May 30, 2017.

The Tenants submitted the Two Month Notice was not issued in good faith because of issues between the parties since December 2016. Policy Guideline #2 elaborates upon the meaning of "good faith". It states:

Good faith is an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage.

A claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End the Tenancy...

...

If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to end Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive for ending the tenancy.

[Reproduced as written.]

I find there is insufficient evidence before me to conclude the Two Month Notice was not issued in good faith. I am satisfied the Landlord truly intends to do what was indicated on the Two Month Notice.

In addition, the Tenants submitted that the caretaker is not for a residential property but for his business. However, the Landlord resides on the property, giving the property both a residential and a business use.

In light of the above, I find that the Two Month Notice is upheld and the Tenants' Application to cancel it is dismissed.

When a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with section 52 of the *Act*, section 55 of the *Act* requires that I grant an order of possession to the landlord. A copy of the Two Month Notice was submitted with the Tenants' documentary evidence. I find the Two Month Notice complied with section 52 of the *Act*. Accordingly, pursuant to section 55 of the *Act*, I find the Landlord is entitled to an order of possession, which will be effective two (2) days after service on the Tenants.

Conclusion

The Two Month Notice is upheld and the Tenants' Application is dismissed. By operation of section 55 of the *Act*, the Landlord is granted an order of possession, which will be effective two days after service on the Tenants.

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 11, 2017

Residential Tenancy Branch