



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, FF, CNL

Introduction

This hearing dealt with applications from both the tenants and landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The tenants applied 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.

The landlord applied for an order of possession for landlord’s use pursuant to section 55 and recovery of the filing fee from the tenants pursuant to section 72.

Both parties appeared and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Both parties were represented by counsel who primarily represented their respective clients.

As both parties were in attendance I confirmed service. The tenant confirmed receipt of the landlord’s 2 Month Notice dated August 20, 2017, the landlord’s application for dispute resolution and evidence materials. The landlord confirmed receipt of the the tenant’s application for dispute resolution and evidence. I find that the parties were served in accordance with sections 88 and 89 of the *Act* with the respective materials.

Issue(s) to be Decided

Should the 2 month Notice be cancelled pursuant to section 49? If not, should the landlord be issued an order of possession on the basis of the 2 Month Notice?
Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced

here. The principal aspects of the parties' claims and my findings around each are set out below.

The tenant has been residing in the rental unit since 2005. The landlord purchased the rental building in 2013. The landlord said that he has been acting as building manager and caretaker for the rental building since his purchase. In 2013 the landlord issued a 2 Month Notice to End Tenancy for Landlord's Use. The landlord testified that among the reasons he issued that 2 Month Notice was that he intended to change tenants and increase rent. The tenant disputed that 2 Month Notice and, after a hearing before the Residential Tenancy Branch, it was set aside.

In 2014 the landlord testified that he issued a 1 Month Notice to End Tenancy for Cause and he was issued an Order of Possession. The landlord said that he did not enforce the Order of Possession at that time. The landlord said that he began a personal relationship with the tenant in or about that time.

In 2015 the landlord moved to his current residence in a different municipality about an hour's drive from the rental unit. The landlord testified that he continued to attend at the rental building on a regular basis to perform his duties as building manager.

The landlord said that when the relationship ended in or about 2015, he applied through the courts to attempt to have the tenant removed from the rental unit. The landlord said that he was advised by the courts that he should seek relief through the Residential Tenancy Branch.

The landlord did not pursue his attempt to have the tenant vacate the rental unit at that time. Instead, the parties signed a new tenancy agreement on February 1, 2016 creating a month-to-month tenancy with rent in the amount of \$500.00. As of the date of the hearing the monthly rent for the unit is \$518.50.

The landlord gave evidence that he finds the daily commute from his residence to the rental building to be exhausting and he has issued the present 2 Month Notice with the intention of living in the building he will be managing. The landlord said that he has put his current residence up for sale and submitted into written evidence copies of a listing agreement with a realtor signed four days prior to issuing the 2 Month Notice. The landlord said that his current residence has not been sold though he has had multiple showings and offers have been received.

The landlord gave detailed information about why he believes that this particular rental unit is appropriate and none of the other units in the rental building are satisfactory.

Among the reasons cited by the landlord include the fact that the rental unit is on an upper floor, the accessibility and size of the unit.

The tenant questions the landlord's intention and notes that this 2 Month Notice is the fourth attempt in as many years that the landlord is seeking to end the tenancy. The tenant notes that her rent is lower than would be expected for a rental unit of similar size in the neighborhood. The tenant said that while the other tenants of the rental building are on fixed term leases because she is on a periodic tenancy the landlord is only able to increase her rent in accordance with the Act.

Analysis

In order to evict a tenant for landlord's use of the property the landlord has the burden of proving, on a balance of probabilities, the reasons on the Notice.

The tenants raised the issue of the intention of the landlord; what I found was essentially a good faith argument.

Residential Tenancy Branch Policy Guideline number 2 notes that 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.

This Guideline reads in part as follows:

If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End 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.

The tenant has raised the good faith intention of the landlord which I find has some basis. From the evidence before me I find that there are sufficient questions regarding the landlord's motivation. While the landlord has provided an explanation of why he wishes to occupy the rental unit, I find the explanation to be unconvincing. The landlord said that he wishes to reside in the rental building instead of commuting from his residence each day. The tenant raised questions about the landlord's current performance of duties, how tenants are not able to easily contact him and that he evades the tenants at the rental building. The tenant said that this behavior is inconsistent with the landlord's stated intent to reside in the rental building where tenants would be able to make requests of him on a regular basis.

The landlord has issued previous Notices to End Tenancy. When an earlier 2 Month Notice was cancelled by this Branch the landlord did not correct any deficiencies and attempt to re-issue a new 2 Month Notice. It was not until the following year that the landlord issued a 1 Month Notice to End Tenancy for Cause. When he was awarded an Order of Possession the landlord chose not to enforce that but instead allowed the tenant to continue residing in the rental unit. It wasn't until the following year that the landlord again attempted to have the tenant removed from the rental unit, this time through the courts. When that attempt did not provide the landlord with the desired outcome the landlord then entered into a tenancy agreement with the tenant. Now, the landlord claims that he has been commuting daily to the rental building to perform duties of a building manager, and that this daily commute has become onerous.

I find the landlord's previous attempts to end this tenancy to raise questions about the motivation for his current attempt. The landlord's multiple previous attempts show that the landlord has acted in an inconsistent and erratic manner. He has made preliminary attempts to end the tenancy but has stayed his right to enforce an earlier Order of Possession. I find the landlord's behavior, taken as a whole, gives rise to sufficient questions about his intention to find that there may be other motivations for issuing the 2 Month Notice.

Furthermore, I note that while the landlord has entered into a Listing Agreement for his current residence he has testified that he has not accepted any offers or taken steps to move from his current address. I find that the Listing Agreement is insufficient evidence to show that the landlord intends to move from his current residence.

I find on a balance of probabilities that there is sufficient doubt regarding the intention and motivation of the landlord. Therefore, the 2 Month Notice is cancelled. The tenancy will continue until it is ended in accordance with the *Act*.

As the landlord's application was unsuccessful the landlord is not entitled to recovery of the filing fee.

Conclusion

The tenants' application to cancel the 2 Month Notice is allowed. The 2 Month Notice is of no continuing force or effect. This tenancy will continue until ended according to the *Act*.

The landlord's application is dismissed without leave to reapply.

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: November 27, 2017

Residential Tenancy Branch