



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNL FFT

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 ("2 Month Notice"), pursuant to section 49; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

MC appeared as counsel for the tenants, while JV represented the landlord in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

The landlord confirmed receipt of the tenants' application for dispute resolution ('application'). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenants' application. As both parties confirmed receipt of each other's evidentiary materials, I find that these documents were duly served in accordance with section 88 of the *Act*.

As the tenants confirmed receipt of the 2 Month Notice on November 23, 2017, I find that this document was duly served to the tenants in accordance with section 88 of the *Act*.

Issues to be Decided

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

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This tenancy began in 2012. The current landlord took over this tenancy in September 2017 when the landlord purchased the home. This is now a month-to-month tenancy with monthly rent set at \$800.00. The landlord holds a security deposit of \$350.00 and a pet damage deposit

in the amount of \$400.00. The tenants are still residing at the residence, and are disputing the 2 Month Notice.

The landlord issued the 2 Month Notice, with an effective move-out date of January 31, 2018 for the following reason:

- The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse.

The landlord provided the following background for why he had decided to issue the 2 Month Notice. The landlord currently resides on the property in a suite above the garage, but wished to move into the tenants' suite due to mobility and health reasons. The landlord submitted in evidence a medical note dated December 5, 2017 confirming that he has a medical condition which requires him to make frequent trips to the bathroom. The landlord testified that the bathroom in the garage is only accessible by going outside, and the landlord has had to resort to "urinating in a bucket in the garage".

The tenants testified that they did not believe that the landlord issued the 2 Month Notice in good faith, and believes that he simply wanted to evict them in order to increase the rent. It was undisputed by both parties that the landlord had previously attempted to increase the rent in a manner that did not comply with the *Act*. The landlord admitted in the hearing that an illegal rent increase was imposed as he was unaware of his obligations, but he had remedied the situation by refunding the tenants. The tenants further testified that despite having access to the garage for storage as part of the lease agreement, the landlord had threatened to serve the tenants with a 2 Month Notice if they did not comply by removing their possessions. The landlord testified in the hearing that the tenants had agreed to remove their belongings and the change of the lease agreement.

Analysis

Subsection 49(3) of the *Act* sets out that a landlord may end a tenancy in respect of a rental unit where the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. The landlord states that her daughter intended to occupy the suite.

Residential Tenancy Policy Guideline 2: Good Faith Requirement When Ending a Tenancy states:

"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 that they do not have an ulterior motive for ending the tenancy.”

Although the landlord stated that he had issued the 2 Month Notice in order to move into the suite himself, I find that the tenants had raised doubt as to the true intent of the landlord in issuing this notice. They gave undisputed sworn testimony that the landlord had attempted to increase the rent in a manner that did not comply with the *Act*. The tenants testified that they were threatened with a 2 Month Notice in order to persuade them to agree to a change of the lease agreement that had previously allowed them access to the garage. As the tenants raised doubt as to the landlord's true intentions, the burden shifts to the landlord to establish that he does not have any other purpose to ending this tenancy.

The landlord did not dispute the fact that he had attempted to increase the rent in a manner that did not comply with the *Act*. Although the landlord did provide a medical note that confirmed his medical condition requiring proximity to a toilet, he did not sufficiently demonstrate he had explored other alternatives to ending this tenancy with the tenants.

I find that the landlord has not met the burden of proof to show that he issued the 2 Month Notice in good faith. I find that the testimony of both parties during the hearing raised questions about the landlord's good faith. The tenants' testimony about the repeated attempts to change the terms of the tenancy agreement was undisputed by the landlord. Furthermore, the landlord obtained the medical note after the tenants had filed their application to dispute the 2 Month Notice, which raises more doubt as to the landlord's true intentions.

As the good faith intention of the landlord was called into question, Residential Tenancy Policy Guideline 2 clearly states that "the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy". I find that the landlord has not met their burden of proof to show that he does not have any other purpose in ending this tenancy. Based on a balance of probabilities and for the reasons outlined above, I find that the landlord has not met the onus of proof to show that the landlord, in good faith, requires the tenants to vacate this specific rental unit for his own personal use.

Accordingly, I allow the tenants' application to cancel the 2 Month Notice. The landlord's 2 Month Notice, dated November 23, 2017, is hereby cancelled and of no force and effect. This tenancy continues until it is ended in accordance with the *Act*.

I find that the tenants are entitled to recovery of the filing fee.

Conclusion

The tenants' application to cancel the landlord's 2 Month Notice is allowed. The landlords' 2 Month Notice, dated November 23, 2017, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

I allow the tenants to implement a monetary award of \$100.00 for recovery of the filing fee, by reducing a future monthly rent payment by that amount. In the event that this is not a feasible way to implement this award, the tenants are provided with a Monetary Order in the amount of \$100.00, and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: March 15, 2018

Residential Tenancy Branch