



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, ERP, RP, FFT

Introduction

This decision is in respect of the tenants' application for dispute resolution under the *Residential Tenancy Act* (the "Act"). The tenants seek the following remedies:

1. an order cancelling a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice");
2. an order for emergency repairs;
3. an order for regular repairs; and,
4. a monetary order for recovery of the filing fee.

A dispute resolution hearing was convened on October 26, 2018, and the landlord, her advocate (the landlord's daughter), and a second daughter of the landlord, and both tenants, attended. The parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. The parties did not raise any issues in respect of service of the Notice of Dispute Resolution Proceeding. However, an issue of service in respect of the landlords' documentary evidence was raised, which I will address in the preliminary matter portion of this decision.

While I have reviewed all oral and documentary evidence submitted that met the requirements of the *Rules of Procedure* and to which I was referred, only evidence relevant to the issues of this application are considered in my decision.

I note that section 55 of the Act requires that when a tenant applies for dispute resolution seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the application is dismissed and the landlord's notice to end tenancy complies with the Act.

Preliminary Issue: Landlords' Documentary Evidence

In reviewing the file, it appeared that the landlords uploaded several pieces of documentary evidence eight days before the hearing. The tenants testified that they did

not receive copies of any of the landlords' evidence. When I asked the landlords' advocate about whether they served copies of the evidence on the tenants, they stated that they had not, and were not aware that they were required to.

Rule 3.15 of the *Rules of Procedure*, under the Act, requires that the "respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant [. . .] as soon as possible. Subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

As the landlords did not serve their documentary evidence on the applicants, this evidence did not meet the requirements of the *Rules of Procedure* and as such I do not accept the submitted documentary evidence.

Issues to be Decided

1. Are the tenants entitled to an order cancelling the Two Month Notice?
2. If not, are the landlords entitled to an order of possession?
3. Are the tenants entitled to an order for emergency repairs?
4. Are the tenants entitled to an order for regular repairs?
5. Are the tenants entitled to a monetary order for recovery of the filing fee?

Background and Evidence

The landlords' advocate (the "advocate") testified that they served the Two Month Notice in the tenants' mailbox on September 2, 2018. The Two Month Notice indicated an end of tenancy date of November 2, 2018, and the reason for issuing the notice was noted on page 2 as "rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse)."

The advocate testified that the landlords intend for their 25-year-old daughter (who was present during the hearing but did not testify) to move into the rental unit, a single family home.

The tenants testified that they entered into a one-year lease on November 1, 2017, which ends on November 1, 2018; the lease converts to a month-to-month tenancy thereafter. Monthly rent is \$2,100.00. They further testified that while they signed a one-year lease, they were intending to rent the house "long term," which to them meant longer than a year. And they were given reassurances on multiple occasions by the landlords that their daughter (the 25-year-old) would never move into the home. They testified that the daughter thoroughly disliked the home and would never be interested in moving into it in any event.

There were, at some point during the tenancy, issues with late rent. The tenants cleared this up, though the tenant C.R. testified that after the brief issues with late rent, that the landlords grew concerned about whether the tenants would be able to keep paying the rent on time. "Things went south," from there, testified the tenant. They testified about the "aggressive" behavior of the landlords' daughter, thought the tenants tried to create good relationship with the landlords.

Regarding their application for regular repairs, the tenants testified that the fence got blown apart from a windstorm in January 2018, and that he (the male tenant) had to prop the fence up. The landlords apparently refused to do anything about the fence. (The tenants submitted photographs of the fence.) In addition, the lock on the back door of the house got broken off, apparently by someone breaking into the home. They also testified about a rock being thrown through a window, but details regarding this incident were minimal.

In their submissions, the tenants argued that the grounds on which the Two Month Notice was issued was not done on good faith. "If they get rid of [us, then they] can rent for more money." The landlords never mentioned the daughter moving into the rental until recently and added that the landlords are building another house in the community that the daughter would, or could, move into.

In her submission, the landlords' advocate argued that "long term" to the landlords means one year. She noted that circumstances had changed since the tenants signed the tenancy agreement, and that the landlords' daughter was now to move into the rental unit. Further, she commented that "we're doing everything in good faith," and testified that she and the landlords were fully aware of the consequences of breaching this section of the Act, regarding the potential of not using the rental unit for the intended purpose as stated in the Two Month Notice.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Where a tenant applies to dispute a Two Month Notice to End Tenancy for Landlord's Use of Property, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice is based.

In this case, the advocate testified that the Two Month Notice was issued under section 49 (1) of the Act, which states that "A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit." Here, the landlords intend for their daughter to move into the rental unit.

The tenants disputed the ground on which the Two Month Notice was issued, submitting that it was not issued in good faith. According to them, the daughter who is supposed to move into the rental unit never liked the house, the landlords are building another house for this daughter, and that the whole reason the landlords issued the Two Month Notice was because of previous late payment of rent issues.

The landlords did not dispute, or counter, any of the tenants' submissions in regard to the above-noted factors. Rather, the advocate submitted that the Two Month Notice was issued in good faith.

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. (See pages 1 and 2 of *Residential Policy Guideline 2. Good Faith Requirement when Ending a Tenancy*.) Moreover, 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. A landlord's intentions might be documented by, for example, a Notice to End Tenancy at another rental unit, or, an agreement for sale and the purchaser's written request 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. The landlord must 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.

Based on the oral and documentary evidence of the tenants, and the lack of the landlords' disputing their submissions, I do not find that the landlords have met the burden of establishing that they truly intend to do what they said on the Two Month Notice. Indeed, the one person—the landlords' 25-year-old daughter—who was in the prime position of providing testimony confirming an intention to move into the rental unit, was silent throughout the hearing. She offered no testimony that might have established the landlords' intentions.

Taking into consideration all the oral testimony and the documentary evidence presented before me, I do not find that the landlords have proven on a balance of probabilities that they intend, in good faith, for their daughter to occupy the rental unit.

Given the above, I hereby cancel the Two Month Notice, dated and signed September 2, 2018, and it is of no force or effect. The landlords are not entitled to an order of possession under section 55 of the Act. This tenancy will continue until it is ended in accordance with the Act.

Regarding the tenants' claim for emergency repairs and regular repairs, the landlords did not dispute the submissions and evidence of the tenants. However, the tenants did

not provide sufficient evidence as to what, specifically, they sought, in regard to repairs. As such, I dismiss this aspect of their claim with leave to reapply.

As the tenants are partly successful in their application, I grant them a monetary award of \$50.00 for partial recovery of the filing fee. I hereby order that the tenants may deduct \$50.00 from the rent for December 2018 in satisfaction of this award.

Conclusion

The Two Month Notice, dated September 2, 2018, is hereby cancelled and is of no force or effect. The tenancy will continue until it is ended in accordance with the Act.

I dismiss the tenants' application for emergency repairs or for regular repairs, with 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 Act.

Dated: October 26, 2018

Residential Tenancy Branch