



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

This teleconference hearing was scheduled in response to an application by the Tenants under the *Residential Tenancy Act* (the “Act”) to cancel a Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Two Month Notice”) and for the recovery of the filing fee paid for this application.

The Landlord and both Tenants were present for the teleconference hearing. Tenant K.G. did not participate in the hearing and Tenant V.L. presented testimony and evidence on behalf of both Tenants.

The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Tenants’ evidence. The Tenants confirmed receipt of the Landlord’s evidence package. As neither party brought up any concerns regarding service of documents, I find that both parties were duly served in accordance with Sections 88 and 89 of the *Act*.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

Should the Two Month Notice to End Tenancy for Landlord's Use of Property be cancelled?

If the Two Month Notice to End Tenancy for Landlord's Use of Property is upheld, is the Landlord entitled to an Order of Possession?

Should the Tenants be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

While I have considered the relevant documentary evidence and verbal testimony of both parties, not all details of the submissions are reproduced here.

The parties were in agreement as to the details of the tenancy. The tenancy began on May 1, 2015 and was for an initial fixed term of three years, set to end on April 30, 2018 at which point the tenancy continued on a month to month basis. A security deposit of \$905.00 was paid at the outset of the tenancy. Current monthly rent is \$1,882.40, due on the first day of each month. The tenancy agreement and a Notice of Rent Increase were submitted into evidence and confirm the details as stated by the parties.

The Landlord testified that on November 19, 2018, he served the Tenants with a Two Month Notice by registered mail. The Two Month Notice, dated November 15, 2018 was submitted into evidence and states the following as the reason for ending the tenancy:

- The 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 effective end of tenancy date of the Two Month Notice was stated as January 31, 2019.

The Landlord testified that his daughter, her spouse and their two children currently reside in a one-bedroom suite in the Landlord's home. As his daughter and her family would like more space, the Landlord stated that they have made plans to move into the rental unit. He stated that they would like to move into the unit prior to April 2019.

The Tenant stated that their original fixed-term tenancy agreement was set to end on April 30, 2018. Prior to that, in February 2018, the Landlord began emailing them to request that they sign a new tenancy agreement for a monthly rent of \$2,200.00.

The Tenant stated that they emailed back and forth with the Landlord as they were not in agreement with signing a new contract with a new rent amount, instead preferring to continue with a periodic tenancy. The Tenant stated that after the discussion regarding an increase to \$2,200.00, the Landlord legally increased the rent 4% which took effect on October 1, 2018. The notice of rent increase was submitted into evidence confirming the monthly rent of \$1,882.40 as of October 1, 2018. The Tenant stated that at the time they were discussing a significant rent increase, the Landlord told them that if they did not agree to signing a new tenancy agreement, then he would end the tenancy for his daughter to move in.

The Tenants submitted into evidence emails between themselves and the Landlord regarding the Landlord's proposed rent increase beginning in February 2018. In an email dated April 14, 2018 the Landlord states that instead of \$2,200.00 per month, he would offer a one-year tenancy agreement at \$2,100.00 per month, or he will take back the rental unit for his daughter. The Tenants stated that they informed the Landlord of the legislation regarding tenancy agreements and rent increases. In an email dated April 24, 2018 the Landlord confirmed that he will not pursue the rent increase or the signing of a new tenancy agreement.

The Tenants stated that they were served with a previous Two Month Notice in October 2018 which they applied to dispute. Following a Dispute Resolution Proceeding and a decision dated November 14, 2018, the Two Month Notice was cancelled. The Tenants submitted this decision into evidence. The Tenants testified that it was approximately five days after receiving the previous decision that they were served with a new Two Month Notice.

Due to the Landlord's previous attempts to increase the rent substantially and the Landlord's statement that if they did not agree he would end the tenancy, the Tenants stated that they are questioning the good faith of the Landlord in serving them with a Two Month Notice. They stated that it has almost been a full year of the Landlord trying to increase the rent or end the tenancy.

The Landlord agreed that he tried to increase the rent following the end of the fixed term as he realized that the rent was under market value. However, he stated that he

became aware of the rules regarding rent increases and the allowable increase amount, which is why he increased the rent by 4% in October 2018.

The Landlord submitted into evidence a written statement in which he explains that his daughter and her family are currently living in a one-bedroom suite and require more space. He also submitted a 2018 property tax notice for his residence and a bank statement of his daughter showing her address as the same as the Landlord's. The Landlord stated that he would be able to provide a letter from his daughter following the hearing. He stated that he did not provide this in time for the hearing as he was waiting for the outcome of the hearing before his daughter could finalize her plans.

Analysis

Section 49(8) provides 15 days for a tenant to dispute a Two Month Notice issued for landlord's use of property. As the notice was mailed to the Tenants on November 19, 2018, and they applied to dispute the notice on November 20, 2018, I find that they applied within the timeframe provided by the *Act*. Therefore, the issue is whether the reasons for the Two Month Notice are valid.

As stated in rule 6.6 of the *Rules of Procedure*, when a tenant applies to dispute a notice to end tenancy, the onus is on the landlord to prove, on a balance of probabilities, that the reasons for the notice are valid. In this matter, the Landlord provided a Two Month Notice pursuant to Section 49(3) stating that his daughter and her family intend to move into the unit. However, as the Tenants have questioned the good faith of the Landlord, the onus is on the Landlord to establish that he was acting in good faith when he ended the tenancy and that a family member intends to move in.

Residential Tenancy Policy Guideline 2: Ending a Tenancy: Landlord's Use of Property provides a definition of good faith as the following:

Good faith is a legal concept, and means that a party is acting honestly when doing what they say they are going to do or are required to do under legislation or a tenancy agreement. It also means there is no intent to defraud, act dishonestly or avoid obligations under the legislation or the tenancy agreement.

Policy Guideline 2 further states the following regarding good faith:

If the good faith intent of the landlord is called into question, the onus is on the landlord to establish that they truly intended to do what they said on the notice to

end tenancy. The landlord must also establish that they do not have another purpose or an ulterior motive for ending the tenancy.

The Tenants questioned whether the Landlord was ending the tenancy due to a desire to increase the monthly rent amount beyond what is legal for this tenancy. The Landlord provided verbal testimony that his daughter planned to move into the rental unit and provided documentary evidence showing that his daughter currently resides with him. However, the Landlord did not any further documentary evidence regarding his daughter's plans to move into the rental unit. The Landlord offered to provide a letter from his daughter following the hearing but did not submit this evidence prior to the hearing.

The good faith intentions of the Landlord were questioned by the Tenants, and they provided documentary evidence that demonstrates that the Landlord has taken steps within the last year to significantly increase the rent or end the tenancy if the Tenants did not agree. The Landlord stated that this was not his intent and instead that his daughter requires the rental unit for herself and her family.

When two parties to a dispute resolution proceeding provide conflicting testimony, it is up to the party with the burden of proof to submit sufficient evidence over and above their testimony to establish their claim. The Landlord submitted evidence to establish the current residence of his daughter, but not to establish her plans to move into the rental unit. As such, due to insufficient evidence, I am not satisfied that the Landlord met the burden of proof to establish that the tenancy should end due to the Landlord or a close family member occupying the rental unit.

Therefore, the Tenants were successful in their application to cancel the Two Month Notice. Pursuant to Section 72 of the *Act*, I award the Tenants the recovery of the filing fee in the amount of \$100.00. The Tenants may deduct this amount from their next monthly rent payment.

Conclusion

The Two Month Notice dated November 15, 2018 is cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

Pursuant to Section 72 of the *Act*, the Tenants may deduct \$100.00 one time from their next monthly rent payment as recovery of the filing fee paid for the Application for Dispute Resolution.

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: January 08, 2019

Residential Tenancy Branch