



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, 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”), an order for the Landlord to comply with the *Act*, *Residential Tenancy Regulation* (the “*Regulation*”) and/or tenancy agreement, and for the recovery of the filing fee paid for this application.

Both Tenants and both Landlords were present for the duration of the teleconference hearing. One Landlord presented testimony and evidence on behalf of both Landlords. The Landlord confirmed that the Notice of Dispute Resolution Proceeding package and a copy of the Tenants’ evidence was received. The Tenants confirmed that a copy of the Landlords’ evidence package was placed in their mailbox. As such, 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, are the Landlords entitled to an Order of Possession?

Should the Landlords be ordered to comply with the *Act, Regulation* and/or tenancy agreement?

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

Background and Evidence

The parties were in agreement as to the details of the tenancy. The tenancy began in 2014 and a new tenancy agreement was signed in 2017 to begin November 1, 2017. Current monthly rent is \$1,300.00, due on the first day of each month. A security deposit of \$600.00 was paid at the outset of the tenancy. The tenancy agreement was submitted into evidence and confirms the details as stated by the parties.

The Landlord provided testimony that on November 29, 2018 she served the Tenants with a Two Month Notice by posting the notice on their door. The Two Month Notice 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 was stated as January 31, 2019.

The Landlord testified that she lives with her mother and sister. They were previously renting a townhome, but due to an eviction they moved into their current one-bedroom apartment. As there are three people residing in a one-bedroom apartment, they would like to move into the two-bedroom rental unit currently occupied by the Tenants. The Landlord stated that two or three of them will move into the rental unit, with one family member possibly staying in the current one-bedroom unit.

The Landlord submitted utility bills and bank statements to show that the family members reside at the same address. They also submitted two photos of their current apartment, stating that one of them sleeps in the living room.

The Landlord stated that there was a time when they were exploring the option of selling the rental unit but have decided to move into the rental unit instead. Initially the Landlord stated that they are still exploring the option of selling, but later clarified that if they say they are moving back in then they will follow through on this.

The Landlord also testified as to a time when they had discussions with the Tenants about raising the rent to \$1,600.00 or \$1,700.00 per month. She stated that this was provided to the Tenants as an option as this would have allowed the Landlord and her family the ability to rent another larger home for the three of them to reside in and for the Tenants to stay residing in the rental unit. As the Tenants did not agree to this rent increase, the Landlord decided they would move into the rental unit and a Two Month Notice was served.

The Landlord stated that in 2017 they had planned to move back into the rental unit and advised the Tenants of such. However, no formal notice was given, and the Landlord later notified the Tenants that their plans had changed. The Landlord apologized for the confusion and stated that she provided the Tenants with compensation in the amount of half a month's rent for the inconvenience. The Landlord submitted the text message into evidence in which she told the Tenants to only pay half of the rent and stated that the confusion over whether they will move into the rental unit has not been about rent.

The Landlord stated that it has been complicated to sort out the plans for the three family members with their living situation and as such this has caused some confusion for the Tenants. However, they have now decided that the best thing to do is for at least two of them to move into the rental unit.

The Tenants provided testimony that they are questioning the intentions of the Landlord. They stated that had they agreed to pay \$1,700.00 per month, then they would not have received a Two Month Notice. However, since they did not agree they were served with the notice to end the tenancy.

The Tenant submitted into evidence a timeline of events. The submission states that in 2017 they received informal notice to move out and the Landlord offered them a one-bedroom apartment to rent instead, which is the apartment that the Landlord is currently living in with her family. The Tenants stated that the Landlord then advised them that her mother changed her mind about moving into the rental unit and the Landlord provided them with half a month's rent compensation for the inconvenience.

The Tenants submitted that on May 27, 2018 they again received notice that the Landlord's mother would be moving into the rental unit. The Tenants responded to the Landlord and stated that they were open to discussing options with the Landlord. The Tenants submitted that this is when the Landlord responded by asking if they would accept a new monthly rent amount of \$1,700.00. The Tenants stated that they did not agree, and this is when they informed themselves of the process regarding legal rent increases. The Landlord responded with an offer of \$1,650.00 for monthly rent, which the Tenants also declined.

The Tenants submitted that on October 1, 2018 they stated that they would consider a legal rent increase only and the Landlord sent them a text message stating that her mother needs to move into the rental unit and do some renovations as well.

The Tenants stated that on October 22, 2018 they received a call from someone claiming to be an appraiser looking to make a time to come by and appraise the rental unit.

On October 23, 2018, the Tenants submitted that they received a text message stating that the Landlord's mother will either need to sell the place or move back in. The text message further stated that they wanted to give the Tenants more time to move but will need to list the place for sale. The Landlord further stated that if she does not hear from the Tenants then they will serve the Two Month Notice and will have to move back in. The text messages were submitted into evidence by the Tenants.

The Landlord testified that since the Tenants have lived in the rental unit for a number of years, they expect that there will be some renovations needed before they are able to move in. The Landlord stated that they would like to have an inspection of the place and find out what is needed for them to reside there. The Landlord stated that she had a family member call the Tenants during a time when she was out of town to talk to them about having an appraiser come by. She stated that this was during a time when they were considering selling the property instead of moving in.

Along with their application to cancel the Two Month Notice, the Tenants also applied for an order for the Landlord to comply with the *Act*, *Regulation* and/or tenancy agreement. The Tenants stated that this request was regarding their wishes for the Landlord to follow the *Act* when ending the tenancy or in raising the rent.

The Tenants stated that the back and forth regarding the Landlord's request to move into the property, sell the rental unit or raise the rent has been very confusing and had

the Landlord complied with the *Act*, it could have been a straightforward process. They also stated their belief that had they agreed to pay \$1,700.00 per month in rent as suggested by the Landlord they would not have received a Two Month Notice.

Analysis

The Tenants received a Two Month Notice pursuant to Section 49(3) of the *Act*. As stated in Section 49(8)(a) of the *Act*, tenants may dispute a Two Month Notice within 15 days. As the Two Month Notice was posted on the Tenants' door on November 29, 2018 and they filed an Application for Dispute Resolution on December 10, 2018, I find that they applied within the timeframe allowable under the *Act*. As such, the matter before me 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 Two Month Notice, the landlord has the onus to prove, on a balance of probabilities, that the reasons for the notice are valid.

Section 49(3) of the *Act* states the following:

(3) 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.

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

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 provides further information regarding the concept of 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 have questioned the good faith intent of the Landlord in issuing the Two Month Notice and provided evidence and testimony regarding the Landlord's previous attempts to end the tenancy or raise the rent. The Tenants also submitted evidence that beginning in 2017 the Landlord has communicated with them regarding the possibility of selling the home instead of moving in and has also stated the intent to complete renovations.

In August 2018 the Landlord proposed a rent increase of \$400.00 per month from \$1,300.00 to \$1,700.00. In October 2018 the Landlord sent the Tenants a text message stating that they will either sell or move back in and that if they don't hear back from the Tenants by the end of the week they will have to move back in. Although it was not clear whether the Landlord was waiting to hear from the Tenants regarding a monthly rent increase or their agreement that they would accommodate the Landlord with the sale of the rental unit, I find this to be further evidence that the Landlord may not have been acting in good faith. It was the following month, in November 2018, that the Two Month Notice was served to the Tenants stating that the Landlord would be moving into the rental unit.

During the hearing the Landlord initially stating that they are still exploring the option of selling the rental unit. Although the Landlord later clarified that they had previously explored this option and have decided to move in, I find this to be further evidence that the Landlord remains unsure of the plans for the rental unit and therefore may not occupy the rental unit as stated on the Two Month Notice.

Although the Landlord submitted evidence to support their testimony that they currently reside in a one-bedroom apartment, I do not find that this establishes their plans to move into the rental unit. At various times the Landlord had advised the Tenants of their plans to sell the rental unit and had also indicated that if the Tenants pay a higher monthly rent then the tenancy could continue.

As such, I am not satisfied that the Landlords have met the burden of proof to establish that they intend in good faith to occupy the rental unit. Instead, I find sufficient evidence from the Tenants to bring into question the good faith intention of the Landlord in issuing the Two Month Notice.

Therefore, the Two Month Notice dated November 28, 2018 is cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

As for the Tenants' claim for the Landlord to comply with the *Act*, I do not find that any specific orders are required. The Tenants clarified that this claim was connected to their application to cancel the Two Month Notice. However, I remind both parties of the importance of familiarizing themselves with their rights and responsibilities under the *Act*, in particular the process of ending the tenancy as stated under Section 44 of the *Act* and the process for increasing rent as stated under Sections 42 and 43 of the *Act*.

As the Tenants were successful in their application, 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 \$100.00 from their next monthly rent payment.

Conclusion

The Two Month Notice dated November 28, 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 from their next monthly rent payment to recover 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 23, 2019

Residential Tenancy Branch