



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL DRI FFT MNDCT OLC RP RR

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution. A hearing by telephone conference was held on March 1, 2019. The Tenants applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "*Act*").

Both parties were present at the hearing. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

The Landlord confirmed receipt of the Tenants' evidence. However, the Landlord did not submit any documentary evidence.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Tenants applied for multiple remedies under the *Act*, some of which were not sufficiently related to one another.

Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues before me at the start of the hearing, I determined that the most pressing and related issues deal with whether or not the tenancy is ending. As a result, I exercised my discretion to dismiss all of the Tenants' application, with leave to reapply, with the exception of the following claim:

- to cancel the 2-Month Notice to End Tenancy for Landlord's Use of the Property (the Notice).

Issues(s) to be Decided

- Are the Tenants entitled to have the Landlord's Notice cancelled?
 - If not, is the Landlord entitled to an Order of Possession?

Background and Evidence

The Tenants acknowledged receiving the Notice on January 7, 2019. The Landlord issued the Notice for the following reason:

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).

In the hearing, the Landlord was asked to explain why the Notice was issued, and he stated that his mother and his brother are going to come from Korea and live in the rental unit. The Landlord stated that he is going to Korea this spring sometime to discuss how and when his family will come to Canada, and for how long. The Landlord stated that his mother and brother will live with him for 6-12 months and then decide if they want to live in Canada permanently. The Landlord stated that his mother and his brother have not bought plane tickets or obtained any visa's yet, but there were going to come sometime this summer.

The Tenant feels this Notice was issued in bad faith, and the Landlord just wants to re-rent the unit for more money. The Tenant provided a text message history between himself and the Landlord, showing many discussions over the last 1.5 years about rental increases. The Tenant stated that they were all for more than the allowable amount under the Act. The Tenant stated that he got a text message from the Landlord on December 31, 2018, which stated that his rent was going to go up more than the allowable amount. The Tenant stated that he took issue with this and 7 days later he was given this Notice to End Tenancy for Landlord's Use. The Tenant feels this is just

another example of how their main motivation is for money, and not to have a family member live there.

The Landlord acknowledged that he has tried to increase rent a couple of times but says that this is independent of his family coming to live with him. The Landlord stated that his intention is to have his family move in, and it has nothing to do with money.

Analysis

Based on the evidence and testimony before me, I make the following findings:

In the matter before me, the Landlord has the onus to prove that the reason in the Notice is valid and that they intend in good faith to occupy the unit (as she has indicated on her 2-Month Notice).

I acknowledge that there has been degradation in the relationship between the Landlord and the Tenants. The Tenants' are alleging that the Landlord has issued this 2-Month Notice in bad faith and it was issued because their relationship has soured.

The burden of proof rests with the Landlord to demonstrate they, in good faith intend to accomplish the stated purpose on the Notice. I note that Policy Guideline #2 states the following:

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.

I have considered the testimony and the evidence on this matter, in totality, and I note the Landlord has provided no documentary evidence to establish that his mother or brother are coming to live with him (no emails, flight tickets, visa applications, etc). I also find the timing of the Notice to be suspicious. The Tenant provided evidence that he disagreed with the requested rent increase, and then received this Notice within days of objecting to an unlawful rent increase.

I do not find the Landlord has provided sufficient evidence and testimony to establish his good faith intent, and that he, or close family member (*parent, spouse or child; or the parent or child of that individual's spouse*) will be moving in.

In this case, the onus is on the Landlord to substantiate the Notice and importantly, his good faith intentions. I find that the Landlord has not provided sufficient evidence to support his good faith intentions, especially given the disputes about rent increases. Therefore, the Tenants' application is successful and the Notice received by the Tenants on January 7, 2019, is cancelled. I order the tenancy to continue until ended in accordance with the *Act*.

As the Tenants were successful with their application, I grant them the recovery of the filing fee against the Landlord. The Tenants may deduct the amount of \$100.00 from 1 (one) future rent payment.

Conclusion

The Tenants' application is successful. The Notice is cancelled.

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 4, 2019

Residential Tenancy Branch