Dispute Resolution Services

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 landlords' 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

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Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As the tenant's advocate confirmed that the tenants received the 2 Month Notice sent by the landlords by registered mail on February 22, 2019, I find that the tenants were duly served with this Notice in accordance with section 88 of the *Act*. As Landlord JD (the landlord) confirmed that they received a copy of the tenants' dispute resolution hearing package sent by the tenants by registered mail on March 11, 2019, I find that the landlords were duly served with this package in accordance with section 89 of the *Act.* Since the landlord also confirmed that they had received a copy of the tenants' written evidence with the hearing package, I find that the tenants' written evidence was duly served in accordance with section 88 of the *Act*.

The landlord testified that they sent the tenants a registered letter on April 8, 2019, a copy of which they provided to the Residential Tenancy Branch (the RTB) for consideration at this hearing. Tenant AC (the tenant) and the tenants' advocate testified that the tenants never received this letter, nor were they anticipating that it would be considered as written evidence for this hearing. As the landlord did not have the Canada Post Tracking Number to confirm this registered mailing, I advised the parties

that I would not be able to consider the contents of the letter as written evidence. However, as the letter was short, and only one paragraph pertained to the 2 Month Notice, I allowed the landlord to read into the record of this hearing the contents of that letter. I have taken this sworn testimony into consideration in rendering my decision.

Issues(s) to be Decided

Should the landlords' 2 Month Notice be cancelled? If not, are the landlords entitled to an Order of Possession? Are the tenants entitled to recover the filing fee for this application from the landlords?

Background and Evidence

The parties signed the initial Residential Tenancy Agreement (the Agreement) for a one-year fixed term tenancy for this three bedroom home on February 16, 2014. This initial term ran from March 1, 2014 until February 28, 2015. The parties signed a second one-year fixed term Agreement on March 1, 2015 for a term that ran from March 1, 2015 until February 26, 2016. When this second term expired, the tenancy continued as a month-to-month tenancy. Monthly rent was initially set at $1,350.00, payable in advance on the first of each month. The landlords continues to hold the tenants' security deposit of $675.00 paid on March 1, 2014, and $675.00 pet damage deposit paid on March 1, 2015.

Although the landlords attempted to increase the monthly rent to $1,400.00, the Arbitrator presiding over the tenants' application to cancel that disputed additional rent increase referred to above was unsuccessful.

The landlords' 2 Month Notice, entered into written evidence by the tenants, identified the following reason for seeking an end to this tenancy:

- *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...*

This Notice relied on the following provisions of section 49(3) of the *Act:*

(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.

In their application to cancel the landlords' 2 Month Notice, the tenants alleged that the landlords were not acting in good faith in issuing that Notice. The tenants provided written evidence supported by sworn testimony that the landlords issued the 2 Month Notice in response to the tenants' previous application to dispute the landlords' attempt to obtain rent in excess of the legally allowed amount for this tenancy. The tenants drew particular attention to the following statements in the previous arbitrator's decision referenced above:

...It should be noted that during the hearing the male landlord behaviour was inappropriate. The male landlord interrupting and was argumentative during the hearing. The landlords made the choice of disconnect from the hearing before the tenants' application could be fully heard. The landlords also made threats of eviction during the hearing...

(as in original)

The tenants maintained that this threat of eviction that the Arbitrator included in their decision was made a number of times to the tenants following their challenge to the rent the landlords were charging for the rental unit. The tenants entered undisputed written evidence that the landlords issued and sent the 2 Month Notice shortly after the landlords disconnected from the February 19, 2019 hearing and before the Arbitrator issued their written decision on this matter. The tenants also entered into written evidence a copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) that was issued to them by the landlords on February 1, 2019, citing unpaid rent that did not become owing for February 2019, before the end of that day. At the hearing, the advocate asserted that the reason cited by the landlords in the 2 Month Notice were not in good faith. The advocate observed that the sworn testimony provided at this hearing by the landlords and their son (the landlords' witness), were unsupported by any written evidence that could have been provided by the landlords before this hearing, and which prevented the tenants from considering the landlords' reasons for seeking an end to this tenancy.

The tenant testified that there had been so many problems with the landlord and his threatening behaviour since December 2018 that the tenants had had to install security cameras. The tenant said that the landlord had come to their rental home twenty or thirty times since December, sometimes resulting in calls to the local police to intervene. The tenant said that the landlord had tried to provoke the tenant to get into a physical altercation with the tenant on some occasions since the tenants initiated their first application for dispute resolution regarding the rent increase issue. The tenant testified

that the landlord had said on a number of occasions, and as recently as March 25, that the reason they were evicting them was because of the previous dispute about the rent the tenants were paying.

The landlords denied these allegations, claiming that they seldom visited the rental home and had not been there for a long time before December 2018. They noted that the rent had not been increased for the first five years of the tenancy.

Although the landlords and their son provided no written evidence for this hearing, Landlord AJA maintained that they had been discussing the prospect of the son and his wife moving into this rental unit since October or November 2018. Landlord AJA testified that the decision to have their son move into the rental home, which had been the family's home while the son was growing up, was made in early February 2019, before the previous hearing on February 19, 2019.

The landlords testified that their son and his wife currently live in a one bedroom basement suite, in an isolated portion of another municipality, with no laundry available to them. They said that the son's wife has a celiac condition that is affected by the heavy spices used in cooking by the family upstairs. They said that the doors are not properly sealed and the cooking odours have caused their son's wife considerable health problems. The landlords' son testified that exposure to wheat products that seep through the cracks in doors and windows in their existing basement suite cause his wife illnesses that last from one week to a month and a half.

The landlords said that the proposed move of their son and his wife to this three bedroom home would position them much closer to the landlords who will soon be retired and living in the same municipality as the rental home where they would like their son daughter-in-law to move. Landlord AJA explained that she has a combination of health problems that would benefit from the presence of their only son and his wife living nearby. Landlord AJA also noted that their son is their only remaining child, after the passing of their other son. They said that the son plans to have children and would like to keep a dog in their home, which would not be permitted at present.

The landlord testified that relocating to the rental home would make it easier for their son to accept a position working in the landlord's company, which would only be a 15-minute drive from the rental home and near the landlords' home. Although the son has not yet issued any written notice to end tenancy to their current landlord, the landlord said that their son is on a month-to-month lease and could end their tenancy within thirty days of receiving confirmation that they could use the rental home for landlords' use of

the property. Landlord AJA said that it would take that long to clean and upgrade the rental home at the end of this five year tenancy.

The landlords' son basically confirmed the testimony given by their parents. The landlords' son said that they moved into the basement rental suite where they are currently residing without realizing how problematic the suite would be for the health of his spouse. The landlords' son testified that his current workplace involves a round trip work commute of 1 1/2 to 2 hours each day. Although the landlords' son said that there was the "potential" of working for his father's company, he confirmed that no such arrangements had yet been made. The landlords' son gave sworn testimony that relocating to the former family home where the tenants currently reside to his present workplace would result in a two hour commute each way every day. The landlords' son said that he was prepared to do this because it would be better for his wife's health, would be less isolating, would be better for his ageing parents, would reduce stress with neighbours, and would save time and expenses related to laundry, which they currently have to have done elsewhere.

In their closing remarks, the landlord said that they were shocked at what the tenant had done over the past several months and that the tenants could never find another place like this one at the monthly rent that was being charged. The landlord said that they could not believe the things that were being said about the landlords by the tenant and the tenant's advocate/brother. The landlord also stated that the tenant should know that the statements made by the tenant could not be taken back and that the tenant's actions were "irreversible."

Analysis

While I have turned my mind to all the documentary evidence, including the decision referenced above, and the testimony of the parties, the statements made by the tenants' advocate, and the landlords' witness, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenants' application and my findings are set out below.

Section 49 of the *Act* contains provisions by which a landlord may end a tenancy for cause by giving notice to end tenancy. Pursuant to paragraph 49(8)(a) of the *Act*, a tenant may dispute a 2 Month Notice for the use of the rental unity by a close family member by making an application for dispute resolution within fifteen days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the 2 Month Notice. As the tenants applied to cancel the 2 Month Notice within the fifteen day time

period, the onus rests with the landlords to demonstrate their entitlement to end this tenancy for the reason stated on that Notice.

Residential Tenancy Policy Guideline 2 provides the following description of the burden of proof the landlord must meet when a tenant raises concerns about the extent to which the landlord has issued the 2 Month Notice in 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...

I should first state that I received very different accounts as to the actions attributed to the landlord and the motivation that lies behind the landlords' issuance of the 2 Month Notice. While the landlord apologized for his behaviour at the previous hearing, the recent history of their interactions, although of some importance to the weighing of whether the landlords were acting in good faith in their issuance of the 2 Month Notice, does not necessarily factor into whether there is sufficient evidence from the landlords that their son does in good faith intend to move into the rental unit.

I would agree with the tenants' observation that the timing of the landlords' issuance of the 2 Month Notice, coming immediately after the hearing of the tenants' application to restore the original monthly rent, is suspicious at best. The landlords had already made a premature attempt to end this tenancy for unpaid rent that was not yet due at the time that the 10 Day Notice was issued. The previous Arbitrator hearing the tenants' application regarding the additional rent increase noted that the landlord had threatened to evict the tenants at the previous hearing prior to disconnecting from that hearing. This information lends further credence to the tenants' claim that the landlord has continued to threaten the tenants with eviction because they initiated their legal, and as it turned out, successful right to apply for dispute resolution regarding the amount of rent they had to pay. Even at this hearing, where the landlord conducted himself appropriately throughout, the meaning of the landlord's statement that the testimony given by the tenant and the tenants' advocate was "irreversible" might be viewed with foreboding by the tenants.

Despite all of these concerns raised by the tenants and their advocate, the matter before me narrows to whether I am satisfied that the landlords have provided sufficient evidence to demonstrate that they were acting in good faith in their issuance of the 2 Month Notice. In this regard, the only people providing sworn testimony at this hearing

had a clearly vested interest in having their respective positions accepted. That is to say, the tenant gave sworn testimony that the landlords were not really planning to have their son relocate to the rental home and had an ulterior motive in issuing the 2 Month Notice, given what had transpired between the parties in the months leading up to this hearing. On the other side, the landlords and their son provided sworn testimony explaining in considerable detail why the landlords' son and his wife needed to relocate from their existing basement suite to this three bedroom home and why it would be beneficial to the whole family to have this happen.

When confronted with such differences in sworn testimony between the parties, it is often necessary to examine any documentation provided as written evidence or undisputed facts that either lend credence to or call into question the sworn testimony of the parties.

Since the burden of proof rests with the landlords in demonstrating that they in good faith plan to use the premises for the purposes stated on their 2 Month Notice, I have to take into account the complete absence of any documentation that would support the landlords' claim that they are acting in good faith.

The landlords and their son testified that their son has not issued any written notice to end his existing tenancy. There is no evidence that the landlords' son has taken action to discontinue utilities at their present location and commence them at the tenants' rental home which is supposed to be vacated by May 1, 2019, nor any evidence of his having arranged for movers . Although given the tenants' application to set aside the 2 Month Notice it may very well have been prudent for the landlords' son to delay any such actions as the landlords' son does not want to be left without a residence, this lack of action can reinforce the tenants' claim that the landlords are not acting in good faith and have no real intention of proceeding with these plans.

The landlords and their son attached considerable importance to the improvement in the health of the wife of the landlords' son that would result from a move from their existing basement suite. However, they provided no written evidence of her health circumstances, no notes from any health care professional, and nothing to demonstrate that they had raised concerns with their current landlord or the tenants upstairs. They produced no bills to demonstrate their added laundry costs at the basement suite where the landlords' son and his wife currently reside, nor a copy of their existing tenancy agreement that would confirm that laundry facilities were not included in their rent, nor photographs of their current basement suite.

I have also taken into consideration that the landlords' son and his wife currently live in a one bedroom basement rental unit. I can understand that they would like to live in a larger residence and may wish to purchase a dog. They may also have children of their own at some point, requiring more room than would be available in a one bedroom basement suite. At this time and given the landlord's statement at the hearing that the tenants could not find another three bedroom home for $1,350.00 per month and the landlords' recent unsuccessful attempt to charge more than that amount of rent, the landlords have supplied little evidence other than their sworn testimony to demonstrate why their son and his wife would need a three bedroom house.

Although the landlord testified that they are in the process of offering his son employment with his company, the landlords' son only stated that there was a "potential" to work for that company given his extensive work history in that field. The landlords' son said nothing about a job being offered to him by the landlord's company or even that this had been discussed with the landlord or officials at that company. The landlords provided no written documentation to show that employment was being offered to the landlords' son at the landlord's company or to demonstrate that the landlord was even authorized to make any such offer of employment there.

In the absence of any confirming written evidence, the landlords' son continues to be employed at a workplace in another community where his existing 1 1/2 to 2 hour return trip would increase to 4 hours if he were to move into the tenants' rental unit. Although I have given the testimony of the landlords' son due consideration in this regard, I find this testimony particularly difficult to accept without some confirmation that this would be a temporary situation that would result in a shortened daily commute after employment to a location closer to their residence was obtained.

The landlords may very well be earnest in their intent to have their son move into the rental unit on the basis of the 2 Month Notice. However, as was noted above, the burden of proof rests with the landlords who issued the 2 Month Notice. Given the recent history of this tenancy and the questions raised by the tenants in their application as to whether the landlords had issued the 2 Month Notice in good faith on the same day as the last hearing of the tenant's application to dispute the amount of rent they were paying, I find that the landlords need to have provided more evidence to meet their burden of proof. Much of the evidence that I cited above as lacking was readily available to the landlords had they taken the care to obtain it and submit it into written evidence for the purpose of this hearing. In the absence of any written evidence to corroborate any of the sworn testimony of the landlords or their son, I find that the tenants have raised sufficient questions as to the extent to which the landlords are

seeking an end to this tenancy in good faith for the reason stated in their 2 Month Notice. For these reasons, I allow the tenants' application to cancel the landlords' 2 Month Notice.

Should significant circumstances change and, for example, the landlords' son obtains employment closer to the tenants' rental home than their current workplace, the landlords are not prevented from issuing a new 2 Month Notice at that time.

As the tenants were successful in their application, I allow them to recover their $100.00 filing fee from the landlords.

Conclusion

I allow the tenants' application to cancel the 2 Month Notice, which is of no continuing force nor effect. This tenancy continues until ended in accordance with the *Act*.

As this tenancy is continuing, I allow the tenants to reduce a future monthly rent payment by $100.00 as a way of recovering their filing fee for this application.

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: April 26, 2019

Residential Tenancy Branch