



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB; CNL, FFT

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an order of possession for breach of an agreement, pursuant to section 55.

This hearing also dealt with the tenants' application pursuant to *Act* for:

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property, dated May 23, 2019 ("2 Month Notice"), pursuant to section 49; and
- authorization to recover the filing fee for their application, pursuant to section 72.

The female tenant did not attend this hearing, which lasted approximately 45 minutes. The male tenant ("tenant") and the landlord attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant confirmed that he had permission to represent the female tenant as an agent at this hearing.

The landlord confirmed receipt of the tenants' application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenants' application.

At the outset of the hearing, the landlord confirmed that he did not wish to pursue his application. I notified him that his application would be dismissed without leave to reapply so he would not be able to pursue it in the future at the RTB. The landlord agreed and consented to same.

The landlord testified that the tenants were served with the landlord's 2 Month Notice on May 23, 2019, in person. The tenant confirmed receipt on the same date. In accordance with section 88 of the *Act*, I find that both tenants were duly served with the landlord's 2 Month Notice on May 23, 2019.

Issues to be Decided

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession for landlord's use of property?

Are the tenants entitled to recover the filing fee for their application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenants' claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on June 1, 2018 with the former landlord, for a fixed term ending on May 31, 2019, after which it would continue on a month-to-month basis or another fixed length of time. A written tenancy agreement was signed by the tenants with the former landlord's name but not his signature. The current landlord purchased the rental unit in October 2018. No new written tenancy agreement was signed between the tenants and the current landlord. Monthly rent in the amount of \$1,200.00 is payable on the first day of each month. A security deposit of \$600.00 was paid by the tenants to the former landlord and it was transferred to the current landlord who retains it. The tenants continue to reside in the rental unit. The rental unit is the basement level of a house, where the landlord's employees occupy the upper floor under a fixed term tenancy from October 2018 to October 2019.

The landlord seeks an order of possession based on the 2 Month Notice. The tenants seek to cancel the landlord's 2 Month Notice and to recover the \$100.00 filing fee paid for their application.

A copy of the landlord's 2 Month Notice was provided for this hearing. It states an effective move-out date of July 31, 2019, indicating the following reason for seeking an end to this 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 landlord testified that he personally intends to move into the rental unit. He claimed that he initially intended for his employee to move into the rental unit. He maintained that around January or February 2019, he asked the tenant to move out earlier than his fixed term end date in May 2019, and that he offered to pay the tenant to do so. He claimed that the tenant refused to move. The landlord maintained that in mid-May 2019, he tried to arrange a move-out condition inspection with the tenant, but the tenant refused to move out, so the landlord had to change his business plans. He confirmed that instead of moving his employee in, he decided he would take over the rental unit personally, as he has business in the area, and his employee could stay where he was.

The landlord testified that he currently lives in his 2,000 square foot house with his wife and three kids. He said that he does not know how large the rental unit is but that it is two bedrooms and one bathroom and he would be living there alone, while his family will be staying in their current house. He stated that he travels a lot, that he will visit his family, and that he will use the rental unit as his home base for the majority of his time to do work for at least a year. He confirmed that he owns six other properties, but this is the only one in the local area. He stated that the tenants living in the upper portion of the same house cannot move because they have a one year fixed term tenancy and there are more people, including a young child and a mother-in-law. He claimed that he does not know how big the upper unit is, but the tenant confirmed that it was likely three bedrooms and two bathrooms.

The tenants dispute the landlord's 2 Month Notice. The tenant stated that the landlord did not issue the notice in good faith. He claimed that since October 2018 when the landlord purchased the property, he told the tenant that he wanted it for his employee. He maintained that in May 2019, the landlord's employee came to the rental unit and told the tenant that if he does not leave by the end of May, he would move in regardless. The tenant said that it felt like a "veiled threat." The tenant explained that he called the landlord and told him what happened with the above employee, and the landlord sent him a text message apologizing and asking the tenant to leave early because the employees had already arranged to move to the area.

The tenant provided a copy of the text messages and emails, indicating that the landlord found a “loophole” to get the tenants out of the unit, since their fixed term was ending in May 2019. The tenant maintained that the landlord can use the upper unit of the same house for himself, but will not do so because his employees live there, and the landlord purchased the house with the intention of moving his employees into it, including the basement.

The landlord agreed that he sent the text messages and emails to the tenant, and while his employee originally intended to move into the rental unit, he changed his mind because of business plans. He maintained that when he called the RTB, he was told that even though there was no signed tenancy agreement by the former landlord, the landlord took payment for the tenancy. The landlord claimed that he decided not to pursue that avenue to have the tenants move out.

Analysis

Subsection 49(3) of the *Act* sets out that a landlord may end a tenancy in respect of a rental unit if the landlord or a close family member intends, in good faith, to occupy the rental unit.

According to subsection 49(8) of the *Act*, tenants may dispute a 2 Month Notice by making an application for dispute resolution within fifteen days after the date the tenants received the notice. The tenants received the 2 Month Notice on May 23, 2019, and filed their application to dispute it on the same date. The tenants’ application is within the 15 day time limit under the *Act*. Therefore, the onus shifts to the landlord to justify the basis of the 2 Month Notice.

Residential Tenancy Policy Guideline 2: Good Faith Requirement When Ending a Tenancy states:

A claim of good faith requires honesty of intention with no ulterior motive...

...

If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End 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 to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate that they do not have an ulterior motive for ending the tenancy.

I find that the landlord had ulterior motives for issuing the 2 Month Notice and it was not issued in good faith for the reasons explained below.

I find that the landlord does not intend to move into the rental unit in good faith. The tenants provided text messages and emails dating back to January 2019, showing that the landlord was trying to find a “loophole” to have the tenants move out because he wanted to move his employees to move in. The landlord offered the tenant money to leave and indicated a number of times that he needed the unit for his employees. An employee of the landlord approached the tenant in person, stating that he would be moving in, and the landlord acknowledged this in a text message to the tenant. The landlord initially applied for breach of a fixed term tenancy agreement, indicating that the fixed term was ending in May 2019, so the tenants had to move out. He withdrew his application at this hearing, not prior. He indicated in his application and at the hearing, that because the former landlord did not sign the original tenancy agreement, it was not valid. He said that he got legal advice from his lawyers that he could pursue that claim, but chose not to do so.

The landlord purchased the rental property house and moved his employees into the upper portion. The landlord chose not to end their tenancy, as they are his employees with a fixed term agreement. The landlord currently lives in a much larger house with his wife and three kids and suddenly wants to downsize to a two bedroom unit for just himself, while his family lives elsewhere. The landlord will likely not be occupying the rental unit long term, indicating it would be a year, and it depended on the economy and business needs in a different Province. The landlord travels a lot and has business and family obligations elsewhere.

Based on a balance of probabilities and for the reasons outlined above, I find that the landlord has not met his burden of proof to show that he intends to move into the rental unit in good faith.

Accordingly, I allow the tenants' application to cancel the landlord's 2 Month Notice. The landlord's 2 Month Notice, dated May 23, 2019, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

As the tenants were successful in their application, I find that they are entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

The tenants' application to cancel the landlord's 2 Month Notice is allowed. The landlord's 2 Month Notice, dated May 23, 2019, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

The landlord's application is dismissed without leave to reapply. The landlord is not entitled to an order of possession.

I order the tenants to deduct \$100.00 from a future rent payment to the landlord for this tenancy at the rental unit, in full satisfaction of the monetary award issued against the landlord for the application filing fee.

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: July 05, 2019

Residential Tenancy Branch