



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNDCT, RP, RR, CNL

Introduction

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

- cancellation of the Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice"), pursuant to section 49;
- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an Order for emergency repairs, pursuant to section 33;
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties 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 parties confirmed that they had exchanged their documentary evidence.

Preliminary Issue- Severance

Residential Tenancy Branch (RTB) Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the Two Month Notice and the continuation of this tenancy are not sufficiently related to any of the tenant's other claims to warrant that they be heard together. The parties were given a priority hearing date in order to address the question of the validity of the Notice to End Tenancy.

The tenant's other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the Notice to End Tenancy. I exercise my discretion to dismiss all of the tenant's claims with leave to reapply except cancellation of the notice to end tenancy and recovery of the filing fee for this application.

Issue(s) to be Decided

Should the notice to end tenancy be cancelled? If not, is the landlord entitled to an order of possession?

Is the tenant entitled to the recovery of the filing fee?

Background and Evidence

The tenant gave the following testimony. The tenant testified that she moved into the unit on February 1, 2015. The tenant testified that the current monthly rent of \$1340.00 is due on the first of each month. The tenant testified that she paid a security deposit of \$650.00 when she first moved in and that the landlord still holds that deposit. The tenant testified that on December 10, 2019 she was served a Two Month Notice to End Tenancy for Landlords Use of Property with an effective date of February 29, 2020 for the following reason:

- *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...*

The tenant testified that she thinks the landlord is trying to avoid doing some required renovations and therefore has issued the notice. The tenant testified that the landlord will "probably" renovate it and rent it out for much more than the current rent.

The landlord gave the following testimony. The landlord testified that his 23 year old son currently lives with him but wishes to move out and move into the subject unit with his partner. The landlord testified that he himself rents and is ending his tenancy so his son must move on. The landlord testified that repairs will need to be done to the unit due to the tenants' negligence but his son will move in shortly after the work is done and that there is no bad faith or ulterior motive to the notice. The landlord testified that his son moving into the unit has been the family plan for an extended time. The landlord requests an order of possession.

Analysis

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

The tenant has called into question whether the landlord has issued the notice in good faith. Residential Tenancy Policy Guideline 2 addresses the "good faith requirement" as follows.

Good faith is an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage.

A claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End the Tenancy. This might be documented through:

a Notice to End Tenancy at another rental unit; an agreement for sale and the purchaser's written request for the seller to issue a Notice to End Tenancy; or a local government document allowing a change to the rental unit (e.g., building permit) and a contract for the work.

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 they do not have an ulterior motive for ending the tenancy.

The landlord gave clear, concise and credible testimony. He provided details about his son now wanting to live with his partner and leave the family home. The landlord was clear that there will be some work required in the unit but as a result of the tenant's poor

cleanliness and negligence; not because of any outdated or faulty plumbing as alleged by the tenant. I find that the landlords' testimony to be compelling. Based on the above, and on a balance of probabilities, I find that the landlord has issued the notice in good faith. As a result, the landlord is entitled to an order of possession pursuant to Section 55 of the Act. The tenancy is terminated.

The Notice remains in full effect and force, the order of possession takes effect at 1:00 p.m. on February 29, 2020.

Conclusion

The tenancy is terminated. The landlord is granted an order of possession. The tenants' monetary claim is dismissed with leave to reapply.

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 13, 2020

Residential Tenancy Branch