



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

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

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

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. The landlord acknowledged receipt of the tenants' evidence. The landlord did not submit any documentary evidence for this hearing.

Issues to be Decided

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

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The landlord gave the following testimony. The tenancy began about 15 years ago. Rent in the amount of \$1200.00 is payable in advance on the first day of each month. The landlord issued a Two Month Notice to End Tenancy for Landlords Use of Property on July 21, 2020 with an effective date of September 30, 2020, as the landlord wishes to move into this unit and wants the tenants to move out. The landlord testified that he presently lives in a postal van that has been converted into a recreational vehicle. The landlord testified that he presently lives 100 kilometers from a hospital. The landlord testified that his health is poor and is deteriorating and wishes to move out of his vehicle

and into a home that is close to a medical facility. The landlord testified that he was very sympathetic to the tenant's injury and told them he wouldn't evict them while his was hospitalized, which he didn't. The landlord testified that his health is worsening and wishes to be granted an order of possession.

The tenants gave the following testimony. RS feels the notice is "unfair", and doesn't think the landlord is acting in good faith. RS testified that the landlord verbally advised them that he was selling the house and that they could stay until it was sold. RA testified that he has had a long-term verbal agreement that he didn't have to pay rent on the property in exchange for improving and maintaining it as a caretaker. RA testified that he broke both his legs several months ago and is still recovering and unable to move. RA testified that the tenants will agree to move but just need more time for him to heal and recover.

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 as to the logistical benefits for him to move closer to a medical facility and the improvement of moving from a vehicle into a home. The tenants made allegations that the home was a “knock down” which was a direct contradiction of the testimony of RA who testified that he spent a lot of time and energy improving and maintaining the home. 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 September 30, 2020.

Conclusion

The tenancy is terminated. The landlord is granted an order of possession. The tenant’s application is dismissed in its entirety without 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: September 14, 2020

Residential Tenancy Branch