



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

Both parties confirmed the tenants served the landlord with the notice of hearing package via Canada Post Registered Mail. Both parties also confirmed the tenants did not serve the landlord with the submitted documentary evidence. Both parties confirmed the landlord served the tenant with the submitted documentary evidence via Canada Post Registered Mail on August 31, 2020. Neither party raised any other service issues.

I accept the undisputed affirmed evidence of both parties and find that the landlord was properly served with the notice of hearing package via Canada Post Registered Mail. The landlord is deemed served as per section 90 of the Act.

The tenants confirmed in their direct testimony that they did not serve the landlord with their submitted documentary evidence (a 2 page copy of the notice to end tenancy). On this basis, the tenant's documentary evidence is excluded from consideration in this hearing. Both parties confirmed the landlord served the tenants with the submitted documentary evidence via Canada Post Registered Mail on August 31, 2020. On this basis, the tenants' have been sufficiently served and are deemed served as per section 90 of the Act.

Issue(s) to be Decided

Are the tenants entitled to an order cancelling the 2 month notice?

Are the tenants entitled to recovery of the filing fee?

Background and Evidence

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 / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Both parties confirmed that neither party had submitted a copy of the signed tenancy agreement. During the hearing extensive discussion took place in which both parties agreed to the following:

The landlord served the tenants with a 2 month notice to end tenancy (2 month notice) dated August 10, 2020 by placing it in the tenants' mailbox on August 10, 2020. The 2 month notice sets out an effective end of tenancy date of October 31, 2020. The reason selected by the landlord on the notice is:

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 child of the landlord or the landlord's spouse.

The tenants provided written details for their application which states,

The reason for eviction is that the child of the landlord or landlord's spouse will be occupied rental unit. We dispute this notice of eviction because property has two exactly same units which the other one is vacant for last few months. The family member can take over freshly renovated suite. On August 1.2020 the landlord did accept 12 cheque for rent. On August 10. 2020 he sent us eviction notis.

[reproduced as written]

The tenants clarified that the rental property is a duplex for which the landlord had recently purchased both sides. The tenants argue that the landlord's son will not occupy the rental unit because the previous owner told them that they "were in a good position" as tenants. The tenants claim that the landlord told them that they would not be evicted.

The landlord clarified that the property was purchased and the landlord took possession on August 1, 2020. The landlord confirmed that he issued the 2 month notice dated August 10, 2020 by placing it in the tenants' mailbox on August 10, 2020. The landlord provided affirmed testimony that the rental unit will be occupied by one of their sons. The landlord submitted a notarized statement from their son, K.R.K. dated August 31, 2020 which states in part,

This letter is to inform you that I intend to move into the property at...in November 2020 and it is my intention to live there...At present I live with my parents.

The landlords also stated that their son is working, teaching online instruction and in a classroom for up to 4 hours a day, six days a week. The landlord stated that this is very disruptive for the landlord and his spouse in their home and as such their son wants his own living space as well.

The landlord also clarified that the duplex unit next door is currently being renovated and is intended for use by his father after renovations. The landlord referenced submitted photographs of the duplex unit next door which shows extensive work for plumbing being performed. The unit is not available for occupation.

The landlord stated that at no time has there been a conversation with the tenants over their tenancy prior to the issuance of the 2 month notice.

Analysis

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

Further 2 Month Notices have a good faith requirement. *Residential Tenancy Policy Guideline* "2. Good Faith Requirement when Ending a Tenancy" helps explain this "good faith" requirement:

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...

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.

In this case, the tenants have argued that the landlord's son will not in good faith occupy the rental unit. However, the tenants have not provided any details to support this claim other than to argue that the vacant duplex unit next door could be occupied by the landlord's son. A review of the landlord's submitted photographs of the unit next door shows the concrete floors dug out as the plumbing is being redone. The duplex unit next door is not currently able to be occupied as a renovation is in progress.

The landlord has also submitted a sworn statement by their son, K.R.K. which states that he intends to occupy the space immediately beginning November 2020.

I find based upon the above submissions of the landlord that the landlord intends in good faith to have his son occupy the rental space. On this basis, the tenants' request to cancel the 2 month notice dated August 10, 2020 is dismissed.

Pursuant to Section 55 of the Act, the landlord is granted an order of possession for the effective end of tenancy date of October 31, 2020.

Conclusion

The tenants' application is dismissed.
The landlord is granted an order of possession.

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: October 01, 2020

Residential Tenancy Branch