



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on December 22, 2020 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") dated December 8, 2020; and
- an order granting the return of the filing fee.

The Tenant and the Landlord's Agent A.L. attended the hearing at the appointed date and time and provided affirmed testimony. At the start of the hearing, the parties acknowledge service and receipt of their respective Application and documentary evidence packages. As such, I find these documents were sufficiently served pursuant to Section 71 of the *Act*.

I note that Section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Tenant entitled to an order to cancel Two Month Notice, pursuant to Section 49 of the Act?
2. If the Tenant is not successful in cancelling the Two Month Notice, is the Landlord entitled to an Order of Possession pursuant to section 55 of the Act?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on April 16, 2013. The Tenant pays rent in the amount of \$850.00 to the Landlord on the 15th day of each month. The Tenant paid a security deposit in the amount of \$850.00 which the Landlord continues to hold. A copy of the tenancy agreement was provided in support.

The Landlord's Agent testified that he served the Tenant with the Two Month Notice dated December 8, 2020 with an effective vacancy date of April 15, 2021 by posting it to the Tenant's door on December 8, 2020. The Tenant confirmed having received the Two Month Notice on the same day. The Landlord's reason for ending the tenancy on the Two Month 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 Landlord's Agent stated that he is the Landlord's son and that he intends to occupy the rental unit along with his fiancé once they gain vacant possession. The Landlord's Agent stated that he currently resides in the upper portion of the rental property which is owned by the Landlord. The Landlord's Agent stated that he had been pursuing a career as a musician, however, since the Covid-19 Pandemic, he has decided to pursue a career as a Lawyer instead. The Landlord's Agent stated that he has been accepted into Law School at a local University which is meant to commence in September 2021. The Landlord's Agent provided a letter of acceptance in support.

The Landlord's Agent stated that he is also intending on getting married in June 2021 and that he and his fiancé intend on moving into the rental unit to start their family together. The Landlord's Agent provided several documents confirming their wedding plans in support. The Landlord's Agent stated that he and his wife will be full time

student and have been offered the opportunity to occupy the rental unit rent free while attending University. The Landlord's Agent stated that he intends to occupy the rental unit as soon as vacant possession is obtained. The Landlord's Agent stated that he intends to reside in the rental unit for at least three years while he attends University.

Lastly, the Landlord's Agent stated that he intends to occupy the rental unit so that he and his fiancé would have the opportunity maintain some privacy as the rental unit is self contained, however, would still have to ability to attend and assist to matters relating to caring for his aging parents who are in poor health, as well as to maintain the rental property for his parents.

The Tenant responded by stating that he doesn't feel as though the Landlord is acting in good faith. The Tenant referred to the Landlord making two previous attempts at ending the tenancy, however, has been unsuccessful. The Tenant stated that the Landlord has more than enough space to offer his son in the upper portion of the home. The Tenant referred to a floor plan in support. The Tenant stated that there is also another portion of the home which the Landlord has previously held a tenancy in. The Tenant stated that this area is currently being used for storage by the Landlord, but could be used to accommodate his son and wife.

The Landlord's Agent stated that the Landlord had previous held a homestay accommodation where the occupant would share the home with the Landlord. The Landlord's Agent stated that they are seeking to occupy the self contained basement suite to maintain their privacy.

The Tenant also referred to issued within the tenancy. The Tenant stated that the Landlord attempted to raise the rent during the Covid-19 pandemic rent freeze. The Tenant stated that the Landlord has manipulated the thermostat to make the rental unit temperature uncomfortable for the Tenant during the tenancy. The Tenant stated that the Landlord has restricted the Tenant's internet without notice. The Tenant stated that the Landlord has failed to accept the rent subsidy application made by the Tenant, making paying the rent more difficult for the Tenant.

The Tenant stated that the Landlord has taken photographs of the rental unit without the Tenant's permission and has shared the photos without the Tenant's consent. The Tenant stated that he has been a good Tenant who has always paid rent on time and he feels as though the Landlord is seeking to end the tenancy in order to re-rent the rental unit for a higher amount.

Analysis

Based on the oral testimony and documentary evidence, and on a balance of probabilities, I find:

Subsection 49(3) of the Act sets out that a landlord may end a tenancy in respect of a rental unit where the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. The Landlord's Agent stated that he is the Landlord's son and that he intends to occupy the rental unit along with his fiancé once they gain vacant possession.

The Landlord's Agent stated he served the Tenant with the Two Month Notice dated December 8, 2020 with an effective vacancy date of April 15, 2021 by posting it to the Tenant's door on December 8, 2020. The Tenant confirmed having received the notice on the same date. I find the Two Month Notice was sufficiently served pursuant to Section 88 of the Act.

According to subsection 49(8) of the Act, a Tenant may dispute a notice to end tenancy for Landlord's use by making an application for dispute resolution within fifteen days after the date the Tenant receives the notice. The Tenant received the Two Month Notice on December 8, 2020 and filed the Application on December 22, 2020. Therefore, the Tenant is within the 15 day time limit under the *Act*.

The Landlord's Agent testified that he intends to occupy the rental unit as he and his fiancé are getting married in June 2021 and want to start their own family together. The Landlord's Agent stated that he has also been accepted in a local University to attend Law School in September 2021. The Landlord's Agent stated that Landlord has offered him the opportunity to reside in the rental unit rent free while he attends University. The Landlord's Agent stated that he is motivated to occupy at rental unit to have privacy from the rest of his family, however, is still near his family to help his aging parents with poor health if needed, as well as maintain the rental property on their behalf.

Although the Tenant expressed that the Landlord as made several attempts at ending the tenancy, I find that the Landlord has demonstrated a valid reason and sufficient evidence to demonstrate that they intend to have the Landlord's son reside in the rental unit, which they are entitled to end the tenancy for. I find that the Tenant has provided insufficient evidence to demonstrate that the Two Month Notice has been issued by the Landlords in an attempt to avoid any obligations to address the Tenant's concerns

under the Act. As a result, I find that I am satisfied by the Landlord, on a balance of probabilities, that they have not served the Two Month Notice in bad faith.

I find that the Landlord has provided sufficient evidence to demonstrate that his son intends to occupy the rental unit once they gain vacant possession of the rental unit. I accept that the Landlord's son is seeking to reside rent free with his fiancé while attending University. I find that it is reasonable for the Landlord's son to be seeking privacy from his parents and requires to self contained basement rental unit to do so, while having to ability to care for his parents and the property. I find that the Landlord has provided sufficient evidence in support of this plan moving forward.

As such, I dismiss the Tenant's Application to cancel the Two Month Notice dated December 8, 2020, without leave to reapply. The Landlord and the Tenant should be aware that if the Landlord fails to use the rental unit as stated above, then pursuant to section 51 of the Act, the Landlord may be subject to paying the Tenant the equivalent of 12 months' rent as a penalty.

Under section 55 of the Act, when a Tenant's Application to cancel a Notice to End Tenancy is dismissed and I am satisfied that the Notice to End Tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the Two Month Notice complies with the requirements for form and content and I find that the Landlord is entitled to an order of possession effective on April 15, 2021 at 1:00PM, pursuant to section 55 of the Act. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Conclusion

The Tenant's Application seeking cancellation of the Two Month Notice dated December 8, 2020, is dismissed without leave to reapply. The Landlord is granted an order of possession effective on **April 15, 2021 at 1:00PM**. The order should be served onto the Tenant as soon as possible and may be filed in the Supreme Court and enforced as an order of that Court.

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: March 19, 2021