



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, LRE, MNDCT, OLC, 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;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issue(s) to be Decided

Should the 2 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Is the tenant entitled to a monetary order?

Is the tenant entitled to an order to have the landlord comply with the *Act*, regulation or tenancy agreement?

Is the tenant entitled to an order to limit the landlords' access to the rental unit?

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

Background and Evidence

The landlord gave the following testimony. The landlord testified that his best friend's wife committed suicide in their home in October 2020. The landlord testified that his daughter is extremely close with his best friends two daughters. The landlord testified that he offered to move into the subject unit and allow his friend to move into the top portion of the home where there is three bedrooms to help his friend. The landlord testified that his friend couldn't stay in his family home due to the horrific reminder of his wife's suicide taking place there. The landlord testified that the notice was given in good faith with no ulterior motive but to simply help his best friend. The landlord issued a Two Month Notice to End Tenancy for Landlords Use of Property on November 26, 2020 for the purposes of him to move into the subject unit.

The tenants father gave the following submissions on behalf of his daughter. AT submits that as his daughter suffers from mental health issues and she will need until April 30, 2021 to move out. AT submits that the landlord should pay her moving and storage costs. AT submits that "its not okay" that his daughter has to move. AT submits that the landlord has options, but his daughter doesn't. AT submits that this tenancy should end, but on his suggested date.

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 and emotional benefits for his best friend and his family to move into the upstairs unit and for the landlord to move into the subject unit. 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 tenant has not paid the rent for the month of March. The landlord testified that he is content with the tenant staying for the month to end this matter peacefully and civilly. The tenant can exercise their right to one free month of rent for March 2021. Based on the landlords offer, the order of possession takes effect at 1:00 p.m. on March 31, 2021.

The tenant requested a monetary order for storage and moving costs, some minor repairs, and materials.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. **In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof.** The claimant must provide **sufficient evidence of the following four factors**; the existence of the

damage/loss, that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party, the applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed, and that if that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The tenant has failed to provide sufficient documentation to satisfy me of the four elements as outlined above, accordingly; I dismiss the tenants monetary claim in its entirety without leave to reapply.

The tenant's application is dismissed in its entirety without leave to reapply.

Conclusion

The landlord is granted an order of possession, the tenancy is terminated. 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: March 04, 2021

Residential Tenancy Branch