



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on December 7, 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 November 24, 2020;
- an order that the Landlord comply with the Act; and
- an order granting the return of the filing fee.

The Tenant and the Landlord attended the hearing at the appointed date and time and provided affirmed testimony.

The Tenant testified that he served his Application and documentary evidence package to the Landlord. The Landlord confirmed receipt. I find these documents were sufficiently served, pursuant to Section 71 of the Act. The Landlord testified that he did not serve the Tenant with a copy of his documentary evidence. Rules of Procedure 3.17 indicates that evidence not provided to the other party in accordance with the *Act*, may or may not be considered during the hearing. As such, I find the Landlord's documentary evidence will not be considered in this hearing.

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.

Preliminary Matters

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important issue to determine is whether or not the tenancy is ending in relation to the Two Month Notice. The Tenant's request for an order that the Landlord comply with the *Act* is dismissed with leave to reapply.

Issue(s) to be Decided

1. Is the Tenant entitled to an order to cancel a Two Month Notice, pursuant to Section 49 of the *Act*?
2. Is the Tenant entitled to the return of the filing fee, pursuant to Section 72 of the *Act*?
3. If the Tenant is not successful in cancelling the Two Month Notice, are the Landlords 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 1, 2017. Currently the Tenant pays rent in the amount of \$1,200.00 to the Landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$400.00 which the Landlord continues to hold. The Tenant provided a copy of the tenancy agreement in support.

The Landlord testified that he served the Tenant in person with the Two Month Notice on November 24, 2020 with an effective vacancy date of January 31, 2021. 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 father or mother of the Landlord or the Landlord's spouse."

The Landlord testified that he currently lives upstairs with his wife, three children, and his wife's parents. The Landlord stated that his wife's parents are elderly and are experiencing mobility, and health issues. As such, the Landlord is seeking to reclaim the basement of the home, which is currently being occupied by the Tenant. The Landlord stated that his wife's parents will move into the basement which is connected to the upstairs portion of the home. The Landlord stated that the relocation of his wife's parents will allow for a safer living environment for his wife's parents and provide the Landlord with more space and privacy in the upstairs of their home. The Landlord stated that this move will take place as soon as they gain vacant possession of the basement rental unit. The Landlord stated that he does not intend on re-renting the rental unit.

In response, the Tenant stated that he feels as though the Landlord has served the Two Month Notice in bad faith. The Tenant stated that he has brought forward several concerns to the Landlord throughout the tenancy and that the Landlord has not taken any steps to address them. Instead, the Tenant stated that the Landlord has notified the Tenant that she should move. The Tenant denies that the Landlord's wife's parents have mobility issues and feels as though they are seeking to end the tenancy based on the ongoing issues with the tenancy.

Analysis

Based on the affirmed 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 stated that his wife's parents intend on moving into the rental unit once it is vacant.

The Landlord served the Tenant in person with the Two Month Notice on November 24, 2020, with an effective vacancy date of January 31, 2021. 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 November 24, 2020 and filed the Application on December 7, 2020. Therefore, the Tenant is within the 15 day time limit under the *Act*.

According to the Residential Policy Guideline 2A Reclaiming a rental unit as living space;

If a landlord has rented out a rental unit in their house under a tenancy agreement (for example, a basement suite), the landlord can end the tenancy to reclaim the rental unit as part of their living accommodation. For example, if a landlord owns a house, lives on the upper floor and rents out the basement under a tenancy agreement, the landlord can end the tenancy if the landlord plans to use the basement as part of their existing living accommodation.

The Landlord testified that his wife's parents are elderly and have mobility and health issues which is why they want to move from upstairs, to downstairs to avoid having to take stairs, reclaiming the basement rental unit for this purpose. The Tenant stated that he doesn't feel as though Landlord served the Two Month Notice in good faith, instead, the Tenant expressed his displeasure with the tenancy and stated that his concerns have been dismissed by the Landlord, which has resulted in them wishing to end the tenancy.

Although the Tenant stated that the Landlord has dismissed his concerns. I find that the Tenant has provided insufficient evidence to demonstrate that the Two Month Notice has been issued by the Landlord in an attempt to avoid any obligations to address the Tenant's concerns under the Act. In contrast, the Landlord testified that the Two Month Notice has been served because his wife's parents intend to occupy the rental unit once its vacant. As a result, I find that I am satisfied by the Landlord, on a balance of probabilities, served the Two Month Notice in good faith and intends to reclaim the basement of the home.

As such, I dismiss the Tenant's Application to cancel the Two Month Notice dated November 24, 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.

As the Tenant was not successful with the Application, I find that they are not entitled to the return of the filing fee.

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 March 31, 2021 at 1:00 PM, 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 November 24, 2020, is dismissed without leave to reapply. The Landlord is granted an order of possession effective on **March 31, 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 04, 2021

Residential Tenancy Branch