



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

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.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and arguments. The parties acknowledged receipt of each others documentary evidence.

Issues to be Decided

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

Background and Evidence

The landlord gave the following testimony. The tenancy began on November 1, 2017 with the monthly rent of \$1352.00 due on the first of each month. In December 2020 the landlords 78 year old mother fell and broke her leg requiring surgery. Her mother is confined to a wheelchair which makes it very difficult to move her up and down all the stairs of the home to have her attend medical appointments. Due to the numerous stairs, her mother requires a special needs transport each time she is to be moved or taken to the doctor at a cost of \$550.00 for each occasion. The landlord testified that the basement is far easier access for her mother to attend appointments and still receive the care and support she needs as she will still be living in the home. The landlord issued a Two Month Notice to End Tenancy for Landlords Use of Property on January 20, 2021 with an effective date of March 31, 2021 for the following reason:

- *The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse...*

The landlord requests an order of possession.

SO gave the following testimony on behalf of the tenants. SO testified that he believes that the landlords mother is moving in. SO testified that he will move out at the end of June. SO testified that he just wants more time so that his children can finish the school year before moving.

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. Both parties agreed that the landlord personally served the tenant with the 2 Month Notice to End Tenancy on January 20, 2021.

It is worth noting, that the tenant does not call into question whether the landlord issued the notice in good faith, but rather just seeks more time to move. However, I have turned my mind to the following as that is the reason "checked off" in the tenants' application.

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. She provided details as to the logistical and financial benefits to have her mother live on the ground floor and the ability to provide her stable and continuous support with her health issues. 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.

Conclusion

The Two Month Notice to End Tenancy for Landlords Use of Property dated January 20, 2021 with an effective date of March 31, 2021 is confirmed. It is of full effect and force. The tenancy is terminated. 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: April 20, 2021

Residential Tenancy Branch