



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; and
- authorization to recover the filing fee from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

At the outset of the hearing the landlord noted a typographic error in the spelling of their name in the application. The parties consented to the application being amended to correct this error and the corrected spelling of the names are used in the style of cause for this decision.

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 recover their filing fee from the landlord?

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 arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

This periodic tenancy began on April 1, 2016. The current monthly rent is \$725.00 payable on the first of each month. A security deposit of \$350.00 was paid at the start of the tenancy and is still held by the landlord. The rental unit is a basement suite in a detached home with 3 units, one of which is used as vacation rental.

The landlord issued a 2 Month Notice to End Tenancy for Landlord's Use dated January 11, 2021 with an effective date of May 1, 2021. The stated reason for the tenancy to end is that the landlord and their close family member intends to occupy the rental unit.

The landlord currently resides in another municipality approximately a 5-hour drive and ferry ride away. The landlord testified that they own their present residence as well as the rental property. The landlord testified that they, and their 10-year old child, enjoy recreational activities available around the rental property. They made frequent visits to the community for vacation and during school breaks.

The landlord said they intend to move to the rental property, have applied for a job as a substitute teacher in the community and intend in good faith to occupy the rental unit for residential purposes. The landlord gave evidence that they share custody of their child with the child's mother. While their child will continue to attend school in their present municipality, they will visit the landlord frequently at the rental property and therefore the rental unit is the appropriate suite with sufficient space. The sole piece of documentary evidence submitted by the landlord is a text communication with the tenant.

The tenant questions the good faith intention of the landlord and says that the rental property has other suites which could be occupied without ending this tenancy. The tenant submits that it is unlikely that the landlord will occupy the rental unit for residential purposes and believes they will simply use the suite during vacation and visits.

Analysis

Section 49(8) provides that a tenant who receives a Notice to End Tenancy for Landlord's Use may dispute the notice within 15 days after the date the tenant receives the notice.

In the present case the parties confirm that the tenant received the 2 Month Notice on or about January 13, 2021 and they filed their application to dispute the notice on January 27, 2021. As such, I find that the tenant was within the timeline provided under the Act to dispute the notice.

When a tenant disputes a notice to end a tenancy for landlord's use, the landlord has the burden of proof on a balance of probabilities. The landlord must establish that they intend in good faith to use the rental unit for the purpose stated on the notice, in this case that they intend to occupy the rental unit.

Residential Tenancy Policy Guideline 2A sets out that "occupy" means "to occupy for a residential purpose". The guideline clarifies that a landlord may end a tenancy if they intend in good faith to use the rental unit as living accommodation or as part of their living space.

Based on the totality of the evidence before me I find that the landlord has not met their evidentiary burden to establish their purpose on a balance of probabilities. It would be reasonable to expect that an individual who is contemplating relocating to another geographic area and municipality would have some documentary evidence to demonstrate the steps taken to prepare for such a move. The landlord made reference to applying for jobs in the new community but provided no documentary evidence in support of their testimony. The landlord provided little information on what they intend to do with their current residence; whether they intend to sell the property, rent it out or transfer it to others.

I find the landlord's submission that they intend to continue shared custody of their child with the child's mother and that the child will regularly travel between the residences to have little documentary support and have little air of reality. The rental unit is located in a different municipality separated by a body of water from the present residence of the landlord. I find that in the absence of documentary evidence in support such as a

separation agreement or court order, the landlord's submission that their child will spend time between the two municipalities to have little credibility.

I further accept that the rental property consists of multiple suites and I find the landlord's insistence on the rental unit being the only appropriate one to occupy to not be supported by the evidence.

Taken in its entirety I find the landlord has not met their evidentiary onus and consequently I allow the tenant's application. The 2 Month Notice of January 11, 2021 is cancelled and of no further force or effect. This tenancy continues until ended in accordance with the Act.

As the tenant was successful in their application they are entitled to recover their filing fee from the landlord. As this tenancy is continuing I allow the tenant to satisfy this monetary award by making a one-time deduction of \$100.00 from their next scheduled rent payment.

Conclusion

The tenant's application is granted. The 2 Month Notice of January 11, 2021 is cancelled and of no further force or effect. This tenancy continues until ended in accordance with the Act.

The tenant is authorized to make a one-time deduction of \$100.00 from their next scheduled rent payment.

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 23, 2021

Residential Tenancy Branch