



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Wynn Real Estate Ltd.,
and [tenant name suppressed to protect privacy]

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 Landlord's Use of Property ("2 Month Notice"), pursuant to section 49.

DZ ("landlord") appeared for the landlord in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

The landlord confirmed receipt of the tenant's application for dispute resolution ('application'). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenant's application. As both parties confirmed receipt of each other's evidentiary materials, I find that these documents were duly served in accordance with section 88 of the *Act*.

As the tenant confirmed receipt of the 2 Month Notice on January 28, 2021, which was posted on the tenant's door. In accordance with sections 88 and 90 of the *Act*, I find that the 2 Month Notice deemed served on January 31, 2021, 3 days after posting. As neither party had submitted a copy of the 2 Month Notice for this hearing, I allowed the landlord to upload a copy of the 2 Month Notice to the online portal during the hearing.

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

This month-to-month tenancy began in 2017, with monthly rent currently set at \$898.00, payable on the first of the month. The landlord had collected a security deposit in the

amount of \$364.00 for this tenancy. The tenant continues to reside in the rental unit with his family.

The landlord issued the 2 Month Notice, with an effective move-out 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 provided the following background for why they had decided to issue the 2 Month Notice. They testified that the 2 Month Notice was issued as one of the landlord's daughters wanted to occupy the suite. The landlord provided a written statement from the daughter, WF, who states that she currently resides at home with her family, including her grandparents, and requires her own living space due to the possible risk of exposing her parents and grandparents to Covid-19 due to the nature of her work.

The tenant disputed the Notice as the tenant does not believe that the landlord had issued the 2 Month Notice in good faith. The tenant believes that the 2 Month Notice was issued because the landlord wants to increase the rent to \$1,800.00 after the tenant had a conversation with the landlord about performing repairs to the kitchen. The tenant submits that other tenants have moved out pursuant to similar Notices, and that the rental units are now occupied by tenants who are not family members of the landlord.

The landlord testified in the hearing that another tenant was served with a 2 Month Notice in order for the landlord's other daughter to move in for similar reasons. The landlord testified that there are 12 units in the building, with the majority of tenancies on fixed-terms, and which cannot be ended pursuant to a 2 Month Notice. The landlord testified that other than the studio that became vacant after the issuance of a 2 Month Notice to End Tenancy, 2 tenancies had ended in the previous years after the issuance of 1 Month Notices to End Tenancy for Cause, and not a 2 Month Notice to End Tenancy for Landlord's Use. The landlord testified that these rental units are now tenanted. The landlord testified that there is a hearing currently set in the future to deal with an application to for an Order of Possession pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent for another rental unit.

Analysis

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 states that the landlord's daughter intends to occupy the rental unit.

Residential Tenancy Policy Guideline 2: Good Faith Requirement When Ending a Tenancy states:

"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 that they do not have an ulterior motive for ending the tenancy."

Although the landlord stated that they had issued the 2 Month Notice in order for the daughter to move into the suite, I find that the tenant had raised doubt as to the true intent of the landlord in issuing this notice. The landlord confirmed that there are 12 rental units in the building. The tenant believes that the 2 Month Notice was issued after the tenant had requested repairs be performed to the rental unit, which is currently rented out for significantly less than what the landlord requested of the tenant if the landlord were to renovate the kitchen. The tenant also believes that other tenants have been served with similar Notices to end Tenancies. As the tenant raised doubt as to the landlord's true intentions, the burden shifts to the landlord to establish that they do not have any other purpose to ending this tenancy.

As the good faith intention of the landlord was called into question, Residential Tenancy Policy Guideline 2 clearly states that "the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy". I have considered the evidence before me, as well as the testimony provided by both parties. The landlord testified that this specific rental unit was chosen because the term was month-to-month, while the other tenants were on fixed-term tenancies. Although I find this explanation to

be a valid one, I find that the landlord has not provided sufficient evidence to support that this is in fact the case. The landlord did not provide tenancy agreements, nor did the landlord provide written statements or witness testimony to support this. I find that the tenant did raise considerable doubt as to the true intentions of the landlord in ending this tenancy, and I find that the landlord has not met their burden of proof to show that they do not have any other purpose in ending this tenancy. Based on a balance of probabilities and for the reasons outlined above, I find that the landlord has not met their onus of proof to show that the landlord, in good faith, requires the tenant to vacate this specific rental unit in order for the daughter to move in.

Accordingly, I allow the tenant's application to cancel the 2 Month Notice. The landlord's 2 Month Notice, dated January 28, 2021, is hereby cancelled and of no force and effect. This tenancy continues until it is ended in accordance with the *Act*.

Conclusion

The tenant's application to cancel the landlord's 2 Month Notice is allowed. The landlord's 2 Month Notice, dated January 28, 2021, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

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: May 3, 2021

Residential Tenancy Branch