



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, RP, PSF, OLC

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, made on February 22, 2021 (the "Application"). The Tenants 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 February 6, 2021.
- an order that the Landlord comply with the Act;
- an order that the Landlord provide a service or facility; and
- an order for regular repairs.

The Tenants and the Landlord attended the hearing at the appointed date and time. No issues were raised during the hearing with respect to service and receipt of the Application and documentary evidence packages. Accordingly, pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

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 Residential Tenancy Branch Rules of Procedure (Rules of Procedure). However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Residential Tenancy Act* (*Act*) requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord I must consider if the Landlord is entitled to an order of possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that is compliant with the *Act*.

Preliminary and Procedural 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 based on the Two Month Notice. The Tenants' request for an order that the Landlord comply with the Act, an order that the Landlord provide a service or facility, and for an order for regular repairs are dismissed with leave to reapply.

Issue(s) to be Decided

1. Are the Tenants entitled to an order to cancel a Two Month Notice to End Tenancy, pursuant to Section 49 of the *Act*?
2. If the Tenants are not successful in cancelling the Two Month Notice, is the Landlord entitled to an Order of Possession pursuant to section 55 of the *Act*?

Background and Evidence

The parties agreed that the tenancy began on December 1, 2019. Currently rent in the amount of \$2,200.00 is due to be paid to the Landlord on the first day of each month, and that a security deposit in the amount of \$1,100.00 was paid to the Landlord.

The Landlord testified that he served the Tenants with the Two Month Notice dated February 6, 2021, with an effective vacancy date of April 30, 2021 by posting it on the door of the dispute address on February 6, 2021. The Tenants confirmed having received the Two Month Notice on February 7, 2021. 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 Landlord stated that he served the Two Month Notice to the Tenants for several reasons. The Landlord stated that he currently lives in the one basement suite of the rental property with his wife. The Landlord stated that he is seeking to move upstairs as

there are four bedrooms. The Landlord stated that he and his wife need more space as they are intending on starting a family. The Landlord stated that his parents are now retired and wish to move to Canada and to reside with the Landlord (their son) in the same home. As such, the Landlord stated that he needs more rooms to accommodate his parents moving in with him. Lastly, the Landlord stated that he is starting his own at home business which also requires the use of more space. In light of the above, the Landlord is seeking to end the tenancy as he and his family intend to occupy the rental unit.

In support of this testimony, the Landlord provided a sworn Affidavit from his parents which indicates that they intend to move in with their son in the rental unit. The Landlord also provided documentary evidence to indicate that he has a new company which will be operating out of the rental property.

In response, the Tenants stated that they feel as though the Landlord is acting in bad faith. The Tenants stated that the Landlord has not complied with the Act during the tenancy. The Tenants provided several examples on how the Landlord has attempted to charge more rent and utilities and has threatened eviction in the past. The Tenants provide some audio recordings which demonstrate some disputes between the parties throughout the tenancy. The Tenants stated that they have been served one eviction notice in August 2020 in relation to a noise complaint.

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 he and his wife, as well as his parents will be moving in together and require the upstairs rental unit to accommodate his family and home business.

The Landlord served the Tenants with the Two Month Notice dated February 6, 2021 with an effective vacancy date of April 30, 2021 by posting it on the door of the dispute address. The Tenants confirmed having received the notice on February 7, 2021. 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 Tenants 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 Tenants receive the notice. The Tenants received the Two

Month Notice on February 7, 2021 and filed their Application on February 22, 2021. Therefore, the Tenants are within the 15 day time limit under the *Act*.

Although the Tenants feel as though the Landlord is acting in bad faith as there have been issues throughout the tenancy, I find that the Landlord has provided sufficient evidence to confirm his intent to occupy the rental unit with his wife and parents. Furthermore, I am satisfied that the Landlord not only needs more space to accommodate his family living with him, but also to operate his home business.

As such, I dismiss the Tenants' Application to cancel the Two Month, without leave to reapply. 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 June 30, 2021 at 1:00PM, 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 Tenants are cautioned that costs of such enforcement are recoverable from the Tenants.

Conclusion

The Tenants' Application seeking cancellation of the Two Month Notice is dismissed without leave to reapply. The Landlord is granted an order of possession effective on June 30, 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: May 31, 2021

Residential Tenancy Branch