



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT, OLC, MNDCT, RR, LRE, PSF

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;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- an order to allow access to or from the rental unit or site for the tenant or the tenant's guests pursuant to section 70; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties participated in the teleconference. At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns.

The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation. All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issue- Severance

Residential Tenancy Branch (RTB) Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claims regarding the Two Month Notices and the continuation of this tenancy are not sufficiently related to any of the tenant's other claims to warrant that they be heard together. The parties were given a priority hearing date in order to address the question of the validity of the Notices to End Tenancy.

The tenant's other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the Notices to End Tenancy. I exercise my discretion to dismiss all of the tenant's claims with leave to reapply except cancellation of the notices to end tenancy and recovery of the filing fee for this application.

Issue(s) to be Decided

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

Is the tenant entitled to recover the filing fee for this application from the landlords?

Background and Evidence

The landlord gave the following testimony. DH testified that his wife WH served the tenant with a Two Month Notice to End Tenancy for Landlords Use of Property on February 17, 2021 with an effective date of April 30, 2021 so that their daughter JH and her family could move in as they have a small child and a new baby that have outgrown the one bedroom unit they presently rent. DH testified that he, WH and JH were in the process of purchasing the property from their other daughter and her husband's family

at the time of issuing the notice. DH testified that the sale was completed and executed on March 23, 2021. DH testified that the tenant was giving significant pushback as the validity of the notice that a decision was made to have JH issue a notice on March 26, 2021 that she would be moving in with her husband and two small children. DH testified that they took this course of action as it may be clearer to the tenant that their daughter who is now part owner of the property will be moving in. DH testified that their family is fully aware of the 12-month penalty under the Act if they do not do what the notice states. DH testified that the tenant is free to come visit at anytime to see that they are acting in good faith throughout this entire process.

The tenant gave the following testimony. VA testified that WH didn't have 50% ownership when she issued the February notice and therefore is invalid. VA testified that when JH gave the March notice, she didn't meet the criteria of having sufficient ownership in the property to be entitled to issue the notice and therefore its also invalid. VA testified that as the landlord issued the notices incorrectly, she should be entitled to remain in her unit.

Analysis

Section 49 of the Act and the Residential Tenancy Policy Guideline 2A address the issue before me as follows:

Landlord's notice: landlord's use of property

Section 49(1) In this section:

"landlord" means

- (a)for the purposes of subsection (3), an individual who
 - (i)at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and
 - (ii)holds not less than 1/2 of the full reversionary interest, and

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

RESIDENTIAL TENANCY POLICY GUIDELINE 2A: Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member

"Landlord" means an individual or family corporation who at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and holds not less than 1/2 of the full reversionary interest.

WH was premature in issuing the first notice as they only had a 1% stake in the property at that time as per the landlords own documentation, accordingly, I cancel the February 17, 2021 Notice. In regard to the March 26, 2021 Notice, WH is the individual that meets the definition of landlord under section 49 of the Act with an interest of at least 50% pursuant to the March 23, 2021 sale, however JH with only a 5% stake in the property issued the notice at that time, accordingly, this notice must be cancelled.

For the benefit of the parties and for absolute clarity, I am satisfied that the landlords issued the notices in good faith and were not trying to circumvent any rules. However, there is a procedure that must be followed, and the landlords did not do that as they did not meet the definition of landlord at the time of issuing the notices. Its clear to me that the landlords were unsure or unclear about the requirements or timing of issuing notices under the Act, and as noted, I find no bad faith on their part. As I have made a finding that the landlords did not act in bad faith, it does not preclude the landlords from issuing a new and appropriate notice.

The filing fee is a discretionary award usually issued by an Arbitrator after a party is fully successful after a full hearing on the merits of the application. As the tenant was only successful in one portion of their application, I decline to award the recovery of the filing fee to them.

Conclusion

The notices are cancelled. The tenancy continues.

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: June 17, 2021

Residential Tenancy Branch