



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNL-MT**

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- more time to make an application to cancel the landlord's 2 Month Notice to End Tenancy for Landlord's Use (the "2 Month Notice") pursuant to section 66; and
- cancellation of the landlord's 2 Month Notice pursuant to section 49.

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 landlord was represented by counsel.

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*.

Issue(s) to be Decided

Are the tenants entitled to more time to file their application to dispute the 2 Month Notice?

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

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.

The tenants are the former owner of the rental property. A condition for the sale of the property was that the tenants would enter into a tenancy agreement with the new owners. The tenants began a tenancy agreement with monthly rent of \$1,800.00 payable on the first of each month on December 1, 2020.

The contract of purchase and sale was assigned by the purchasers to the present landlord before the completion of the property sale. The landlord submits that the purchase of the rental property was part of an intended land assembly. The landlord subsequently learned that the rental property and the adjoining properties are not feasible for land assembly. The landlord says that the tenancy agreement has now been frustrated and there is no obligation to continue this tenancy pursuant to the *Act*.

The landlord submits that on January 6, 2021 they approached the tenant and informed them that they intend to use the rental property as their residential home.

The landlord subsequently issued a 2 Month Notice dated March 16, 2021 indicating that the rental unit will be occupied by the landlord's close family member, their child. The landlord gave some testimony saying that their adult son is 22-years of age and hopes to move out of the family home into the rental property. The landlord also mentioned that the son has a large dog so they require the space of the rental property.

The tenants confirmed receiving the 2 Month Notice on March 25, 2021. They testified that they were delayed in filing their application for dispute resolution as they were seeking legal advice and searching for alternate accommodations to comply with the notice. The tenants submit that they had initially secured alternate accommodations but that it became unavailable when that rental property was sold in April 2021.

Analysis

Section 66 of the *Act* allows a time limit established in the *Act* to be extended in *exceptional circumstances*. Policy Guideline 36 goes on to say that "exceptional implies that the reason for failing to do something at the time required is very strong and

compelling.” Furthermore, the party making the application for additional time bears the onus of putting forward persuasive evidence to support the truthfulness of the reason cited.

Section 49(8)(a) of the *Act* provides that a tenant may dispute a 2 Month Notice issued by a landlord who intends in good faith to occupy or have a close family member occupy the rental unit, by filing an application within 15 days after the date the tenant receives the notice.

In the present circumstances the tenants confirmed that the landlord’s 2 Month Notice was served on them on March 25, 2021. The tenants filed their application for dispute resolution on April 13, 2021, outside of the 15 days provided by the *Act*.

The tenants testified that they were delayed in filing their application for dispute resolution as they were arranging for accommodations to comply with the 2 Month Notice and vacate the rental unit and concurrently seeking legal advice. The tenants filed their application on April 13, 2021, as soon as they became aware that they would not be able to vacate the rental unit and had received legal advice as to the appropriate next steps.

Under the circumstances, I find that the tenants have provided sufficient evidence to demonstrate that there are exceptional circumstances that an extension of time is appropriate. I find the tenants took reasonable and appropriate steps by arranging for alternate accommodations and seeking legal advice when served the notice. I accept that the tenants intended to comply with the relevant time limits and their inability to file their application within the legislative time limit was due to unforeseen circumstances outside of their control when their intended residence was sold. The tenants filed their application as soon as it was possible. I further find that on its face the application indicates there is merit to the tenant’s position.

Accordingly, as I find that there were exceptional circumstances that resulted in the tenants being unable to file their application within the legislative time limits I allow the extension of time to file the present application to dispute the 2 Month Notice.

The landlord submits that this tenancy has been frustrated as the landlord is no longer able to use the rental property as part of a land assembly. The landlord submits that the tenancy agreement between the parties originates from a contract of purchase and sale which was assigned to the landlord by the previous purchasers.

I do not find the landlord's submission to have any merit or be persuasive. I find the landlord's position to be logically inconsistent. If the inability of the landlord to develop the rental property as part of a land assembly has resulted in frustration, it would be to the contract of purchase and sale of the property not to the tenancy agreement. If the landlord believes that they were not provided what they contracted for their action would be against the original purchasers from whom this agreement was assigned.

The tenancy agreement contains no provision stating that the tenancy is contingent on the landlord being able to develop the rental property. I find that the tenancy agreement originates from the sale of the property is immaterial. The tenancy agreement simply provides that the tenants have exclusive use of the rental property for residential purposes in exchange for payment of monthly rent. I find that any change of circumstances regarding the proposed land assembly does not affect the nature, purpose and meaning of the tenancy agreement itself.

I further note that the landlord testified that they have continued to collect monthly rent from the tenants. There is no indication that the payments have been accepted for use and occupancy only or that the landlord has acted in any manner that would reasonably be construed as believing the tenancy agreement can no longer be fulfilled.

I do not find the landlord's submissions that this tenancy has been frustrated to have merit. I find that there remains an enforceable tenancy agreement between the parties.

When a tenant disputes a notice to end tenancy, the onus shifts to the landlord, to demonstrate on a balance of probabilities that the tenancy should end for the reasons provided on the notice.

The 2 Month Notice of March 16, 2021 provides the reason for the tenancy to end is that the rental unit will be occupied by the landlord's close family member. The landlord testified that it is their adult son who intends to occupy the rental property.

I find insufficient evidence in support of the landlord's position. The landlord gave little testimony or evidence regarding the adult son, their current address, their living situation or why this property is appropriate for them to occupy. The stated purpose directly contradicts the landlord's own evidence where they submitted that on January 6, 2021 they met with the tenants and "informed them that he intended to use the property as his residential home".

Based on the totality of the evidence before me I find the landlord has not met their evidentiary onus to demonstrate on a balance of probabilities the basis for this tenancy to end. Consequently, I allow the tenants' application and cancel the 2 Month Notice of March 16, 2021. The notice is of no further force or effect and this tenancy continues until ended in accordance with the *Act*.

Conclusion

The tenants' application is granted. The 2 Month Notice of March 16, 2021 is cancelled and of no further force or effect. This tenancy continues until 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: August 17, 2021

Residential Tenancy Branch