



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of a Two Month Notice to End Tenancy for Landlord's use ("Two Month Notice") pursuant to section 49.

EF and ML attended and testified they were property managers for the landlord applicant ("the landlord's agent").

The tenant VM attended with her daughter KT who resides with the tenant and primarily spoke on her behalf ("the tenant").

The landlord acknowledged receipt of the tenant's Notice of Hearing and Application for Dispute Resolution. No issues of service were raised. I find the tenant served the landlord in compliance with the *Act*.

The landlord submitted no documentary evidence.

The parties acknowledged neither was recording the hearing. Both provided their email addresses to which the Decision is to be sent.

Issue(s) to be Decided

Is the tenant entitled to the relief requested?_Is the landlord entitled to an Order of Possession?

Background and Evidence

The parties submitted considerable conflicting testimony in a 52-minute hearing. 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 tenant is seeking cancellation of a Two Month Notice. The landlord is seeking an Order of Possession.

The tenant explained that she lives in one unit of a 26-unit complex. The parties did not submit a copy of the tenancy agreement. However, they agreed on the background of the 17-year tenancy as follows:

INFORMATION	DETAILS
Type of tenancy	Monthly
Date of beginning	August 1, 2004
Date of ending	ongoing
Length of tenancy	17 years
Monthly rent payable on 1 st	\$714.00
Security deposit	\$250.00
Date of tenant's Application	May 7, 2021

The parties also agreed that the landlord issued a Two Month Notice to End Tenancy for Landlord's Use. A copy was submitted as evidence which is in the standard RTB form. The tenant acknowledged service. The details are as follows:

INFORMATION	DETAILS
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Type of Notice	Two Month Notice
Date of Notice	April 27, 2021
Effective Date of Notice	Jun 30, 2021
Date and Method of Service	April 29, 2021 - personal
Effective Date of Service	Jun 30, 2021
Reasons for Issuance	Occupation by the landlord
Application for Dispute Resolution filed - date	May 7, 2021 (within time)

The landlord's agent testified as follows.

1. The unit is owned by the landlords, a father and son.
2. The son lives in one of the units in the complex and is the sole person to provide instructions to the landlord's agent who has never spoken with the father.
3. The father, although a Canadian citizen, lives outside the country; he intends to travel to the unit's location when the unit is available for his occupancy; he has not booked travel.
4. The father has specifically requested occupation of the unit because it does not overlook the parking lot, is private and "ideal", and does "not need a lot of renovations".
5. A unit became available in the complex after the tenant was served with the Two Month Notice, but it required a lot of repairs which took place; that unit overlooked the parking lot and did not meet the father's expectations. That unit was subsequently rented for \$1,975.00, increased from the previous occupant's rent of about \$900.00.

The landlord's agent testified that they believe the unit will be occupied by the father; the Two Month Notice is issued in good faith. The landlord does not have the intention evict the tenant for the purpose of increasing the rent to another occupant.

The tenant asserted the belief that the landlord intends to rent the unit to someone else at "double the rent". They said the Two Month Notice was not issued in good faith.

The tenant testified as follows.

1. No renovations or updating have taken place in the unit during the 17-year

occupancy. For example, the tenant stated the original shag carpet is still on the floor in the unit.

2. The rent for the tenant is well below market rates as they have lived there 17 years.
3. The tenant described past situations, such as one involving landscaping, resulting in an unfair previous warning to the tenant from the landlord that their tenancy could be ended.

The tenant submitted a handwritten letter dated May 25, 2021 from the tenant MM stating that MM had informed the landlord “a few months ago” that MM would be vacating in the summer of 2021.

The landlord responded that MM’s unit did not meet the landlord’s expectations as set out above.

The tenant requested the Two Month Notice be cancelled. The landlord requested an Order of Possession.

Analysis

Section 49 of the Act allows a landlord to end a tenancy on a date that is not earlier than two months after the date the tenant receives the notice or if the tenancy is for a fixed term not earlier than the date specified as the end of the tenancy in the agreement, if they, *in good faith*, plan to move into the rental unit.

The tenant questioned the good faith of the Notice. The tenant stated that the landlord wanted a unit which did not require a lot of renovations. Yet, their unit had never been renovated, and a renovated unit recently became available which the landlord could have occupied.

The tenant claimed that the Notice was issued because of the landlord wants the tenant to move out so the unit could be renovated and rented at a higher rate as the previous rental, described above. They questioned why the landlord had submitted no documentary evidence stating what the intentions were.

Residential Tenancy Branch Policy Guideline number #2 examines the issue of ending a tenancy for landlord’s use of property. It notes that good faith is an abstract and intangible quality that encompasses an honest intention, the absence of malice and no

ulterior motive to defraud or seek an unconscionable advantage. A claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End the Tenancy.

This Guideline reads in part as follows:

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

Since the good faith intent of the landlord is called into question in this case, the burden is on the landlord to establish that they truly intend to do what they said on the Two Month Notice. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive for ending the tenancy.

I find that the issuance of the Notice in these circumstances and without supporting documentary evidence indicates the landlord may have another purpose in ending the tenancy. I find the tenant's assertion credible that the landlord wanted a low-rental tenant to move out and that this is the real reason for the Notice.

The landlord has submitted no documentary evidence and has relied solely on the testimony of the landlord's agent.

In considering all the facts of this case and the testimony of the parties, I have reached this conclusion and find that the tenant's version of events is the more believable. Where the parties' evidence conflicts, I prefer the tenant's testimony as the more plausible.

I therefore find that the landlord has not met the burden of proof on a balance of

probabilities that their intention in issuing the Notice is to have the landlord (the father) live in the unit. I find they may have another reason, that is the eviction of a tenant paying a below market rental who may have been troublesome to the landlord by requesting landscaping.

As a result of my findings, I grant the tenant's application to cancel the Two Month Notice.

As I have cancelled the Notice, I direct that the tenancy continues until ended in accordance with the agreement and the Act.

Conclusion

The Two Month Notice is cancelled, and the tenancy continues until ended in accordance with the agreement and 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: September 14, 2021

Residential Tenancy Branch