



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

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 Landlords Use of Property (the 2 Month Notice) pursuant to section 49; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

This matter was scheduled for a conference call at 11:00 a.m. on this date. The landlord participated in the teleconference, the tenant did not. The tenant is the applicant in this matter and initiated the process. The landlord received the Notice of Hearing documents and Application to call into this hearing from the tenant. I am satisfied that the tenant was aware of this hearing, accordingly; the hearing proceeded and completed in their absence. The landlord was given a full opportunity to provide testimony, submissions, arguments, and written documentation.

Issues to be Decided

Should the landlord's 2 Month Notice 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 landlord?

Background and Evidence

The landlords' testimony is as follows. The tenancy began on or about August 1, 2019. Rent in the amount of \$450.00 is payable in advance on the first day of each month. The landlord issued a Two Month Notice to End Tenancy for Landlords Use of Property

on June 27, 2021 with an effective date of August 31, 2021, the landlord's son wishes to move into this unit and wants the tenant to move out. The landlord testified that her son wants to move out and have his own space for his schooling and career in health care. The landlord testified that she and the tenant have come to an agreement that the tenancy can end on December 31, 2021 and has submitted a copy of the Mutual Agreement to End a Tenancy. The landlord testified that she wants to assist the tenant and although the effective date has passed, she is content with the order of possession taking effect on December 31, 2021.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the landlord, not all details of the respective submissions and arguments are reproduced here. Although the tenant did not participate in today's hearing, by filing the application, they have challenged the good faith of the notice.

The tenant has called into question whether the landlord has issued the notice in good faith. Residential Tenancy Policy Guideline 2 addresses the "good faith requirement" as follows.

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 might be documented through:

*a Notice to End Tenancy at another rental unit;
an agreement for sale and the purchaser's written request for the seller to issue a Notice to End Tenancy; or
a local government document allowing a change to the rental unit (e.g., building permit) and a contract for the work.*

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.

The landlord gave clear concise and credible testimony. She provided details as to the logistical and financial benefits for her son to move into the unit to pursue his career in health care. Based on the above, and on a balance of probabilities, I find that the landlord has issued the notice in good faith. As a result, the landlord is entitled to an order of possession pursuant to Section 55 of the Act. The tenancy is terminated.

The Notice remains in full effect and force. Based on the information provided I am satisfied that under these unique circumstances, that the order of possession take effect at 1:00 p.m. on December 31, 2021 as per the landlord's request.

Conclusion

The tenancy is terminated. The landlord is granted an order of possession. The tenants' application is dismissed in its entirety without leave to reapply.

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: November 04, 2021

Residential Tenancy Branch