



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on July 8, 2021 (the "Application"). The Tenant 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 June 25, 2021; and
- an order granting the return of the filing fee.

The Tenant and the Landlords attended the hearing at the appointed date and time. At the start of the hearing, the parties confirmed service and receipt of their respective Application and documentary evidence packages. As such, I find the above-mentioned documents were sufficiently served pursuant to Section 71 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 Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Tenant entitled to an order to cancel a Two Month Notice, pursuant to Section 49 of the *Act*?
2. Is the Tenant entitled to the return of the filing fee, pursuant to Section 72 of the *Act*?

3. If the Tenant is not successful in cancelling the Two Month Notice, are the Landlords entitled to an Order of Possession pursuant to section 55 of the Act?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on July 1, 2018. The Tenant pays rent in the amount of \$1,400.00 to the Landlords on the first day of each month. The Tenant paid a security deposit in the amount of \$700.00 which the Landlords continue to hold.

The Landlords testified that they served the Tenant in person with the Two Month Notice on June 30, 2021 with an effective vacancy date of August 31, 2021. The Tenant confirmed having received the Two Month Notice on the same day. 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 Landlords stated that they own two houses on the same property. The Landlords stated that they currently occupy one house, while the other house is rented by the Tenant. The Landlords stated that they served the Two Month Notice to the Tenant as they intend on turning the garage on the rental house into a shop as the Landlord is a woodworker and requires the space for his own use. The Landlords stated that they tried to work out other options, such as building a shop, however, it proved to be too costly. The Landlords stated that they tried to work with the Tenant in order to use the garage for their own use and maintain the tenancy, however, the Tenant had logistical concerns regarding the Landlord's proposal.

As such, the Landlords stated that they intend on using the remaining portion of the rental house as a guest suite for when the Landlords' family comes to visit. The Landlords stated that they have a large family, therefore, this would accommodate their visits, as well as the Landlords' need for shop space. The Landlords confirmed during the hearing that they will occupy the rental house once they gain vacant possession, and they do not intend to re-rent any portion of the rental house, for at least six months.

In response, the Tenant stated that the Landlords had communicated their intent to use the garage in the rental house for shop space, however, the Tenant disagreed due to

several factors including the division of hydro, noise, dust, privacy, and compensation, which ultimately led the Landlords to serve the Two Month Notice. The Tenant stated that she felt bullied by the Landlords' actions. As such, the Tenant is seeking that the Two Month Notice be canceled and for the return of the filing fee.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

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 Landlords stated that they intend to occupy the rental house to make use of the garage as a shop, and to have the remaining portion of the home for their use when family attends to visit.

The Landlords served the Tenant in person with the Two Month Notice on June 30, 2021 with an effective vacancy date of August 31, 2021. The Tenant confirmed having received the notice on the same date. 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 Tenant 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 Tenant receives the notice. The Tenant received the Two Month Notice on June 30, 2021 and filed the Application on July 8, 2021. Therefore, the Tenant is within the 15 day time limit under the *Act*.

In this case, I find that the Tenant did not dispute that the Landlords intend to use the rental house for their own use, rather, the Tenant stated she felt bullied, as the Landlords dismissed her concerns regarding the Landlords use of the garage for a shop while the Tenant continued to occupy the rental house. I find that while the Tenant had legitimate concerns, I can appreciate that the Landlords made an attempt to gain a shop space which they require, while maintaining the tenancy.

I find, however, that the Landlords are entitled to end the tenancy as long as they intend to use the rental house for their own use. I find that the Landlords have provided sufficient evidence to support that they intend to occupy the rental house to make use of the shop and guest suite for their family.

As such, I dismiss the Tenants' Application in its entirety without leave to reapply. The Landlords and the Tenant should be aware that if the Landlords fail to use the rental unit as stated above, then pursuant to section 51 of the Act, the Landlords may be subject to paying the Tenant the equivalent of 12 months' rent as a penalty.

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 Landlords an order of possession.

I find that the Two Month Notice complies with the requirements for form and content and I find that the Landlords are entitled to an order of possession effective on November 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 Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Conclusion

The Tenant's Application seeking cancellation of the Two Month Notice dated June 25, 2021 is dismissed without leave to reapply. The Landlords are granted an order of possession effective on November 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: November 08, 2021

Residential Tenancy Branch