



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 by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on September 13, 2021 (the “Application”). The Tenants applied to dispute a Two Month Notice to End Tenancy for Landlord’s Use of Property dated August 30, 2021 (the “Notice”). The Tenants also sought reimbursement for the filing fee.

The Tenants appeared at the hearing with K.C., their advocate. The Landlord appeared at the hearing with J.R., their agent, and M.A., their witness. M.A. was not involved in the hearing until required. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Tenants, Landlord and M.A. provided affirmed testimony.

J.R. was originally named as the landlord on the Application. It was determined at the hearing that the Landlord is the owner of the rental unit and should be named on the Application and this is reflected in the style of cause.

Both parties submitted evidence prior to the hearing. I confirmed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all documentary evidence, submissions and oral testimony of the parties and witness. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, is the Landlord entitled to an Order of Possession?
3. Are the Tenants entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted and the parties agreed it is accurate. The tenancy started February 28, 2018 and was for a fixed term ending February 28, 2019. The agreement was extended to February 29, 2020. The parties agreed the tenancy is currently a month-to-month tenancy. Rent is due on or before the first day of each month. The Tenants paid a \$650.00 security deposit.

The Notice was submitted. The Notice has an effective date of November 01, 2021. The grounds for the Notice are that the child of the Landlord or Landlord's spouse will occupy the rental unit. The Tenants did not raise any issue with the form or content of the Notice.

The parties agreed the Notice was served on Tenant L.N. in person August 30, 2021.

The Landlord testified as follows. The Landlord's daughter, M.A., and granddaughter moved into the Landlord's house three years ago and continue to live with the Landlord. M.A. is 40 years old and their granddaughter is nine years old. M.A. and their granddaughter share one bedroom and share a bed. M.A. and their granddaughter do not have their own kitchen. When they moved, M.A. was just starting a business but now M.A. is ready to live independently. The Landlord and M.A. are used to having their own households. M.A. and their granddaughter living with the Landlord has been detrimental to their relationship. M.A. has looked for a rental but renting in the area is difficult and the Landlord has the rental unit. M.A. intends to move into the rental unit.

In response to questions by K.C., the Landlord testified that M.A. could move into the rental unit tomorrow. The Landlord restated that M.A. is living with the Landlord and therefore is available to move any time. The Landlord testified that M.A. plans to live in the rental unit permanently and that M.A. does not have another option as they are not moving back in with the Landlord.

M.A. testified as follows. M.A. plans to move into the rental unit because they moved to the area three years ago from another city and they have a business in the area. M.A. originally moved into the Landlord's house with their daughter. It took time to create their business but M.A. now has plenty of business and can support themselves. M.A. wants to move into the rental unit.

M.A. confirmed that the letter submitted is authored by them.

In response to questions by K.C., M.A. testified as follows. M.A. was ready to move into the rental unit last fall and are just waiting for the rental unit to be ready. M.A. plans to do minor repairs and then move into the rental unit. M.A. plans to occupy the rental unit permanently and for at least six months. M.A. is putting roots down in the area because they have an established business in the area. M.A. needs a place to live and will live in the rental unit for at least six months.

K.C. advised that the Tenants are not raising an issue of law or fact in relation to the Notice. K.C. made submissions about hardship caused to the Tenants if they must move but acknowledged hardship to tenants is not covered by the *Act*. K.C. submitted that the Landlord should not ask the Tenants, who are seniors, to move out of the rental unit on short notice considering their medical issues, the pandemic and the critical shortage of affordable housing for seniors in the area. K.C. advised that the Tenants need some time to move out.

Tenant L.N. testified about the Tenants requiring more time to move out and raised concerns about where they would store their belongings and where they would stay if they had to move out.

The Landlord sought an Order of Possession effective April 01, 2022.

The Tenants submitted documentary evidence about the hardship caused to them if they are required to move out of the rental unit.

The Landlord submitted a letter from M.A. about their intention to move into the rental unit.

Analysis

The Notice was issued pursuant to section 49(3) of the *Act* which states:

(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.

A “close family member” includes a child as stated in section 49(1) of the *Act*.

Section 55(1) of the *Act* requires an arbitrator to issue the Landlord an Order of Possession when a tenant disputes a notice to end tenancy, the dispute is dismissed or the notice is upheld and the notice complies with section 52 of the *Act*.

Policy Guideline 2A addresses ending a tenancy for occupancy by the Landlord’s close family member including the good faith requirement.

The Tenants had 15 days to dispute the Notice pursuant to section 49(8)(a) of the *Act*. There is no issue that the Tenants received the Notice August 30, 2021. The dispute was filed September 13, 2021, within time.

Pursuant to rule 6.6 of the Rules, it is the Landlord who has the onus to prove the grounds for the Notice. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts are as claimed.

There is no issue that M.A. is the daughter of the Landlord and therefore a “close family member” as defined in the *Act* because I understood the parties to agree on this.

Based on the testimony of the Landlord and M.A., as well as the letter from M.A. in evidence, I accept that M.A. intends in good faith to occupy the rental unit once the Tenants vacate. I found the testimony of the Landlord and M.A. detailed as to the reasons M.A. wants to move into the rental unit. The reasons provided for M.A. wanting to move into the rental unit are logical and reasonable. The testimony of the Landlord in relation to M.A. moving into the rental unit is corroborated by the testimony of M.A. as well as the letter in evidence from M.A. There was nothing about the testimony of the Landlord or M.A. that caused me to question the reliability or credibility of the testimony.

Further, I did not find K.C. or the Tenants to raise any issue with the validity of the Notice. The submissions and evidence of the Tenants really speaks to the hardship caused to the Tenants if the Notice is upheld. However, sections 49 and 55 of the *Act* do not consider hardship caused to tenants by upholding a notice to end tenancy that is valid. The issue before me is whether the Notice is valid pursuant to section 49 of the *Act* and, if it is, the Landlord is entitled to an Order of Possession based on the Notice.

I have reviewed the Notice and find it complies in form and content with section 52 of the *Act* as required by section 49(7) of the *Act*.

Given the above, I find that the Landlord had grounds to issue the Notice, that M.A. is a “close family member” of the Landlord and that M.A. intends in good faith to occupy the rental unit. I also find that the Notice complies with section 52 of the *Act*. In the circumstances, I dismiss the dispute of the Notice without leave to re-apply.

I find section 55(1) of the *Act* applies and I issue the Landlord an Order of Possession effective April 01, 2022, at 1:00 p.m. I note that the Landlord would have been entitled to an Order of Possession on two days notice to the Tenants; however, the Landlord agreed at the hearing to extend the effective date of the Order of Possession to April 01, 2022.

Given the Tenants were not successful in the Application, the Tenants are not entitled to reimbursement for the \$100.00 filing fee.

Conclusion

The Landlord is issued an Order of Possession effective at 1:00 p.m. on April 01, 2022. This Order must be served on the Tenants and, if the Tenants do not comply with this Order, it may be filed and enforced in the Supreme Court 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 *Act*.

Dated: January 27, 2022

Residential Tenancy Branch