



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a residential tenancy dispute. The Tenant applied on September 30, 2021 for an order to cancel a Two Month Notice for Landlord's Use of Property, dated September 19, 2021 (the Two Month Notice).

The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The Tenant testified they served the Notice of Dispute Resolution Proceeding (NDRP) and their evidence on the Landlords by registered mail on October 8, 2021, and the Landlords confirmed receipt. I find the Tenant served the Landlords in accordance with section 89 of the Act.

The Landlords testified they served their responsive evidence on the Tenant by email on February 2, 2022, and the Tenant confirmed receipt. I find the Landlords served their responsive evidence on the Tenant in accordance with section 88 of the Act.

Issues to be Decided

- 1) Is the Tenant entitled to an order cancelling the Two Month Notice?
- 2) If not, are the Landlords entitled to an order of possession?

Background and Evidence

The parties agreed on the following particulars of the tenancy. It began January 1, 2020; rent is \$1,350.00, due on the first of the month; and the Tenant paid a security deposit of \$650.00, which the Landlords still hold.

The Landlords testified they served the Two Month Notice by email on September 19, 2021, which the Tenant confirmed.

A copy of the Two Month Notice is submitted as evidence. It is signed and dated by the Landlord, gives the address of the rental unit, states the effective date, states the reasons for ending the tenancy, and is in the approved form. The Two Month Notice indicates the tenancy is ending because the father or mother of the landlord or landlord's spouse will occupy the unit.

The Landlord testified that his 80-year-old mother is having difficulty walking and managing the stairs on the exterior and interior of her home, and needs to move. He testified that his mother was scheduled for the first of two knee surgeries, but the procedure was cancelled due to COVID-19. The Landlord testified his mother will require procedures on both knees, which will take roughly six to eight months for her to recover from.

The Landlord testified that elective surgeries are not being done now, due to the pandemic, but that when his mother does get a surgery date, they "will need to move fast," so find it imprudent to wait to seek possession of the rental unit.

The Landlord testified that he and his family will be providing care to his mother, and intend to house her in the rental unit. The Landlord submitted that his mother is not able to live upstairs with the rest of the family, because of the stairs in that unit.

The Landlord testified that the ground-level rental unit is ideal for his mother, as it has no stairs. The Landlord testified that the Landlords intend to renovate the bathroom of the unit to facilitate walk-in bathing, thereby accommodating his mother's mobility issues.

The Landlord testified they are seeking an order of possession for the end of February, 2022.

During his testimony, the Tenant spoke about desiring more time to find alternate housing, the challenges of finding affordable housing to accommodate his family of four, his concerns about housing security, and having a medical condition that impacts his ability to search for and move into a new home.

In his testimony, the Tenant did not suggest the Landlords are not going to follow through on using the space as described, that being to accommodate the Landlord's aging mother.

However, the Tenant noted there is currently no date set for the Landlord's mother's procedure.

Analysis

Based on the testimony and submission of the parties, I find the Landlords served the Two Month Notice on the Tenant by email on September 19, 2021, and that it was received the same day, as confirmed by the Tenant. I find the Landlords served the Tenant the Two Month Notice in accordance with section 88 of the Act.

As the Two Month Notice is signed and dated by the Landlord, gives the address of the rental unit, states the effective date, states the reasons for ending the tenancy, and is in the approved form, I find it meets the form and content requirements of section 52.

The standard of proof in a dispute resolution is on a balance of probabilities, which means that it is more likely than not that the facts are as claimed. The onus to prove their case is on the person making the claim.

As described in Residential Tenancy Branch Rule of Procedure 6.6, when a tenant applies to dispute a notice to end tenancy, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice is based.

I accept the Landlord's undisputed affirmed testimony that their elderly mother is not able to manage stairs due to knee problems that require surgery, and that there are stairs outside and inside her current home, and that there are also stairs inside the Landlords' living space.

I accept the Landlord's testimony that the Landlords intend to renovate the ground floor rental unit, which has no stairs, and use it to house his mother during and after her bilateral knee procedures.

I also accept the Tenant's submission that the Landlord's mother does not yet have a date for her first knee surgery. However, I find reasonable and believable the Landlord's explanation that elective surgeries have been halted due to the impact of the virus, and that the family will have little notice once a date is set for the first procedure, and therefore are not comfortable waiting to obtain possession and complete the renovations necessary to enhance accessibility.

Taking into careful consideration all of the evidence presented, and applying the law to the facts, I find on a balance of probabilities that the Landlords have met the onus of proving the reason for the Two Month Notice, that being that it will be occupied by the Landlord's mother.

Therefore, in accordance with section 49 of the Act, I find the Landlords are entitled to an order of possession.

Conclusion

The Tenant's application is dismissed; the Two Month Notice is upheld.

The Landlords are granted an order of possession which will be effective February 28, 2022, at 1:00 p.m.

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: February 11, 2022

Residential Tenancy Branch