



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 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.

At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so.

All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation. All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing, they did not want to settle this application, and they wanted me to make a decision regarding this application. Neither party made any adjournment or accommodation requests. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Background and Evidence

The landlords' agent gave the following testimony. The tenancy began on or about February 1, 2017. Rent in the amount of \$1000.00 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 September 14, 2021 with an effective date of October 31, 2021. The landlord issued the notice for the following reason:

2 Month Notice to End Tenancy

The landlord's 2 Month Notice, entered into written evidence by the tenant, identified the following reasons for seeking an end to this tenancy:

- *The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse...*

RN testified that her mother and father wish to move into this basement unit from the upstairs of the home. RN testified that her father has difficulty breathing and climbing up and down stairs is not easy for him.

RN testified that her mother is especially affected by climbing stairs due to having both her kneecaps replaced and is scheduled for surgery to address her uterus cancer. RN testified that the landlords offered the tenant the other unit in the home that was available, but the tenant declined. RN testified that she disputes the tenants claim that the eviction is so that the landlord can rent the unit out for higher rent. RN testified that the issue has never been about money. RN testified if the landlord was so concerned with money why hadn't they raised the rent during her five-year tenancy. RN testified that her parents wish to have the unit to address their medical issues.

SS testified that he witnessed the landlord arguing with the tenant over a rent increase. Counsel for the landlord submits that the landlord had solicited the tenant to pay more rent and when the tenant didn't do that, the landlord issued a notice. Counsel submits that the landlord's motivation to end this tenancy is a financial one. Counsel submits that the landlords could have taken the other unit when it was available in the summer

of 2021. Counsel submits that the landlord's behaviour and actions clearly demonstrate they have issued the notice in bad faith and that the notice should be cancelled and that the tenancy should continue.

Analysis

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 tenant's claim and my findings around each are set out below.

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 landlords' agent gave clear concise and credible testimony. She provided details as to the medical benefit for her parents to reside in the basement suite. Based on the above, and on a balance of probabilities, I find that the landlord has issued the notice in good faith. The Notice complies with section 52 of the Act in form and content. 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.

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: February 17, 2022

Residential Tenancy Branch