



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, CNL, LAT

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;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

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. The landlord acknowledged the evidence submitted by the tenant; the landlord did not submit any documentation. The parties 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?

Should an order be made suspending or setting conditions on the landlords access to the suite?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The landlords' agent gave the following testimony. The tenancy began on or about February 5, 2018. Rent in the amount of \$975.00 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 27, 2021, with an effective date of November 30, 2021 as the landlord/owner wishes to reclaim the suite. The agent testified that her grandfather had a stroke in early 2020 and his doctor recommended that he avoid stairs if possible. The agent testified that the landlord who is her grandfather, resides in the upper floor of the home but due to failing health and difficulty in climbing stairs, wishes to reside in the basement where there are no stairs to climb.

The tenant gave the following testimony. The tenant testified that her life "is very complicated right now" and wishes to stay. The tenant testified that the landlord has told her that he can't afford to go to India. The tenant testified that the landlord has "tried to irritate my quiet enjoyment".

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 submitted documentation for this hearing, the landlord did not. However, much of the tenants' photo evidence is blurred or irrelevant. In addition, the tenants video evidence is also of a poor quality, and she has failed to provide an

explanation as to how this is relevant in this matter. Furthermore, much of the evidence is unrelated, dated and the issues were resolved in May 2020.

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.

Although the tenant filed an application to dispute the 2 Month Notice to End Tenancy for Landlords Use of Property, she didn’t dispute that the landlord was going to move into the unit. The tenant was given a full opportunity to explain and present her position, but, when she did, her testimony was disjointed, unclear and focused on dated and irrelevant issues. The landlords’ agent gave clear concise and credible testimony. She provided details as to the mental and physical benefits for her grandfather to move into the unit. Although the tenant made some allegations, she did not provide sufficient evidence to show any bad faith. 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 dated September 27, 2021, with an effective date of November 30, 2021, remains in full effect and force.

Conclusion

The tenancy is terminated. The landlord is granted an order of possession.

The tenant's 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 24, 2022

Residential Tenancy Branch