



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFT, CNL**

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the "2 Month Notice") pursuant to section 49; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties were represented at the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord was represented by an agent (the "landlord").

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Are the tenants entitled to cancellation of the 2 Month Notice? If not, is the landlord entitled to an Order of Possession on the basis of the 2 Month Notice?

Are the tenants entitled to recover the filing fee from the landlord?

Background and Evidence

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 claim and my findings around each are set out below.

The parties agree on the following facts. This tenancy began in 2019 with a monthly rent of \$2,300.00 payable on the first of each month. A security deposit of \$1,150.00 and a pet damage deposit of \$500.00 were paid at the start of the tenancy and are still held by the landlord. The rental unit is the main portion of a stand-alone house with a separate occupant residing in the basement suite.

The landlord has previously issued a 1 Month Notice to End Tenancy for Cause dated July 14, 2021 on the grounds that there has been significant interference or unreasonable disturbance to other occupants or the landlord and that there was a breach of a material term of the tenancy agreement that was not corrected within a reasonable time. The landlord issued a second 1 Month Notice dated October 25, 2021 for the same grounds.

At the time the first 1 Month Notice was issued the landlord was residing in a separate residence. The landlord sold their residence in September 2021, after the issuance of the first 1 Month Notice but prior to the issuance of the second 1 Month Notice or the hearing on the tenant's application to cancel those Notices. The landlord submits that they were intending to occupy the rental unit upon gaining possession in accordance with the 1 Month Notices.

The landlord testified that as they have sold their residence, they intended to occupy the rental unit as their permanent home. As there was already 1 Month Notices issued, the landlord expected to gain possession of the rental unit on the basis of those notices and did not issue the 2 Month Notice until they received the results of the previous hearing.

The tenants disputed the 1 Month Notices and there was a hearing on November 19, 2021. The presiding arbitrator cancelled the 1 Month Notices in a decision dated November 22, 2021. The landlord filed an application for review on November 26, 2021 and the decision was upheld in a review consideration decision dated December 8, 2021.

The landlord issued the present 2 Month Notice on November 28, 2021. The reason provided on the notice for the tenancy to end is that the rental unit will be occupied by a close family member of the landlord, specifically the child of the landlord.

The landlord testified that the original intention was for the landlord's child who is approximately 19 years of age to occupy the rental unit by themselves, but since the issuance of the Notice they subsequently decided that the landlord, their spouse and their other child would also reside in the rental unit.

The landlord and their family are presently occupying a rental unit elsewhere, having entered a month-to-month tenancy commencing November 30, 2021.

The parties testified that the landlord owns a number of different properties in the municipality. The landlord submits that they find the rental unit to be the most appropriate property to occupy based on its size, location and character. The parties agree that there is currently an occupant in the basement suite of the property. The landlord says that residing in the basement suite is not a viable option and they intend to maintain that tenancy after gaining possession of the main portion of the building.

Analysis

Section 49 of the *Act* provides that upon receipt of a notice to end tenancy for landlord's use the tenant may, within 15 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

The parties testified that the tenants were served with the 2 Month Notice on or about November 28, 2021. The tenants filed their application for dispute resolution on November 30, 2021. I find that the tenants filed their application within the 15 days provided under the *Act*.

When a tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 2 Month Notice.

The tenants raised the issue of the intention of the landlord; what I found was essentially a good faith argument.

Residential Tenancy Branch Policy Guideline number 2 notes that 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. In the matter at hand the landlord must intend for the rental unit to be occupied by the landlord or a close family member of the landlord.

This Guideline reads in part as follows:

*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 tenant has raised the good faith intention of the landlord which I find has some basis. I find that a 2 Month Notice issued shortly after a 1 Month Notices were successfully disputed and cancelled to raise doubt about the landlord's sincerity.

While the landlord's agent gave coherent and cogent testimony about the landlord's intention to move into the rental unit, I find the timing of the Notices and the surrounding circumstances to raise questions about their motives.

I find the landlord's issuance of a 2 Month Notice mere days after the 1 Month Notices were cancelled to raise doubts that the landlord has other purposes for the issuance of the notice.

The landlord's submission is that since the landlord sold their residence in September 2021, they intended to occupy the rental unit as their principal residence. The landlord submits that they expected to gain possession of the rental unit on the basis of the 1 Month Notice and did not issue a 2 Month Notice until after the results of the previous hearing. I find the submission to be inconsistent with the conduct of the landlord. If the landlord was relying upon the 1 Month Notice of July 14, 2021 to gain possession of the rental unit, there would have been no need to issue a subsequent 1 Month Notice on

October 25, 2021. The landlord says they did not issue a 2 Month Notice as they were relying upon the original 1 Month Notice to gain possession of the rental unit. If the landlord was relying upon the 1 Month Notice of July 14, 2021 there would have been no need to issue subsequent 1 Month Notices.

The landlord submits that the landlord decided they wished to reside in the rental unit when they sold their residence in September 2021. However, the 2 Month Notice of November 28, 2021 indicates that the person intended to occupy the rental unit is the child of the landlord or their spouse. The landlord submits that they originally intended for the rental unit to solely be occupied by their child but subsequently decided to occupy it themselves as well. I find the submissions of the landlord to be contradictory. The landlord simultaneously submits that their intention crystallized in September 2021 to occupy the rental unit themselves and that they decided to occupy the rental unit after the issuance of the 2 Month Notice of November 28, 2021.

I further accept the undisputed evidence of the parties that the landlord owns multiple properties in the municipality and that they had a number of options to choose as their residence. The landlord did not provide details on what makes the rental unit the appropriate choice to occupy.

I find on a balance of probabilities that there is sufficient doubt regarding the intention and motivation of the landlord. Therefore, the 2 Month Notice is cancelled. The tenancy will continue until it is ended in accordance with the *Act*.

As the tenants were successful in their application, they are entitled to recover the filing fee from the landlord. As this tenancy is continuing I allow the tenants to satisfy this monetary award by making a one-time deduction of \$100.00 from their next scheduled rent payment.

Conclusion

The tenants' application to cancel the 2 Month Notice to End Tenancy for Landlord's Use is successful. The Notice is of no further force or effect and this tenancy will continue until ended in accordance with the Act.

The tenants are authorized to make a one-time deduction of \$100.00 from their next scheduled rent payment.

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: March 11, 2022

Residential Tenancy Branch