Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

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 December 13, 2021 for:

- an order to cancel a Two Month Notice for Landlord's Use, dated November 29, 2021 (the Two Month Notice); and
- the filing fee.

The hearing was attended by the tenant, the landlord, and the landlord's unit manager. Those present 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 she served the Notice of Dispute Resolution Proceeding (NDRP) and her evidence on the landlord by registered mail on December 17, 2021, and sent a second package of evidence by registered mail on March 9, 2022. The unit manager confirmed he received the two packages of documents from the tenant. I find the tenant served the landlord in accordance with section 89 of the Act.

The unit manager testified he served the landlord's responsive evidence on the tenant by registered mail on March 4, 2022. The tenant confirmed she received the landlord's evidence. I find the landlord served 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, is the landlord entitled to an order of possession?
3) Is the tenant entitled to the filing fee?

Background and Evidence

Those present agreed on the following particulars of the tenancy. It began January 10, 2017; rent is $1,846.80, due on the 10th of the month; and the tenant paid a security deposit of $847.50 and a pet deposit of $847.50.

The unit manager testified he served the Two Month Notice on the tenant by registered mail on November 30, 2021. The tenant testified she received the Two Month Notice on December 5, 2021.

The Two Month Notice indicates the tenancy is ending because the child of the landlord or landlord's spouse will occupy the unit.

The landlord testified that she wants the unit for her son, as soon as possible. The unit manager submitted that there has already been a delay due to the hearing, and it would be "best … to let us have possession as soon as possible." During the hearing, the unit manager did not state that the landlord's son would be moving into the rental unit.

The tenant testified that over the years of the tenancy there have been "multiple efforts to get [her] out," that the landlord is seeking to increase her revenue from the rental unit beyond the legal limits, and that the landlord has attempted to illegally raise her rent on multiple occasions. The tenant submitted as evidence email exchanges with the unit manager spanning 2017 to 2021, which document three instances of the tenant informing the site manager that the rent increase is illegal, and the site manager then adjusting the increase.

The unit manager testified that every time they implement a rent increase it is done "according to the book."

The tenant testified that in November 2021 the unit manager informed her that in January 2022 the landlord would be beginning a renovation project in the unit to repair water damage, and asked the tenant about scheduling a brief inspection. The tenant testified that during the inspection, she was presented with a Mutual Agreement to End

a Tenancy (MAET) form proposing that she vacate the rental unit on January 9, 2022. The tenant testified she was given less than 24 hours to accept or decline the MAET.

The tenant submitted a November 5, 2021 email from the unit manager and a copy of the MAET form as evidence.

The unit manager testified that the MAET discussed with the tenant "was just a suggestion."

The tenant submitted as evidence photos of the water-damaged area of the kitchen floor, and testified that the damage was merely cosmetic and that the repair would not require her to move out. The tenant submitted that it seemed the landlord's "intention was to get her out" so as to renovate the rental unit.

The tenant testified that during the tenancy it has never been mentioned to her that the landlord's child is moving into the rental unit. The tenant submitted that nowhere in the landlord's evidence is there a mention of the landlord's child occupying the unit.

In response to the tenant's testimony, the unit manager stated that he "[doesn't] know what [the tenant] is talking about," and that all regarding the rental unit has been done legally. The unit manager testified that they answered all the tenant's emails to her satisfaction. He submitted that every year there is an allowed rent increase, and that when the landlord forgot to act on an allowed rent increase, she let the tenant pay the old rent for a few months. The unit manager testified that all issues "were settled to [the tenant's] satisfaction, and she was thankful."

The unit manager presented a Statement of Facts document, submitted as evidence by the landlord, and referred to items 1 and 2, which note that in 2017 there was an email discussion between the parties regarding the fact that the condition for the tenant to move out at the end of the fixed term was no longer enforceable, and that the parties signed a new tenancy agreement in January 2018.

The landlord has submitted the following as evidence:

- photos of the unit;
- emails to and from the tenant;
- a copy of the Two Month Notice;
- proof-of-service documentation;
- the Statement of Facts document; and
- copies of tenancy agreements.

Aside from the Two Month Notice indicating that the child of the landlord or landlord's spouse will be occupying the unit, neither the Statement of Facts nor the other documents submitted as evidence by the landlord make reference to her son moving into the rental unit.

The landlord's son did not attend the hearing, and was not summoned as a witness.

Analysis

Based on the testimony of the parties, I find the landlord served the Two Month Notice on the tenant by sending it by registered mail on November 30, 2021. The tenant testified she received the Two Month Notice on December 5, 2021. I find the landlord 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 an 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 occurred 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. And, as noted in Residential Tenancy Policy Guideline 2A: *Ending a Tenancy for Occupancy by Landlord, Purchaser, or Close Family Member*, when the issue of a dishonest motive or purpose for ending the tenancy is raised by a tenant, the onus is on the landlord to establish they are acting in good faith.

Policy Guideline 2A explains that good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant, they do not have an ulterior purpose for ending the tenancy, and they are not trying to avoid obligations under the Act or the tenancy agreement.

In her testimony, the tenant has indicated that the landlord has not served the Two Month Notice in good faith.

I find the landlord has provided very limited evidence, and that the evidence provided does not refer to her son occupying the rental unit.

I find that the following call into question the landlord's claim that her son will move into the rental unit, and that the landlord is acting in good faith: the landlord's son did not attend the hearing or provide testimony, the unit manager did not make direct reference to the landlord's son occupying the rental unit, the tenant testified that the landlord proposed that she move out, the tenant testified it has not been mentioned to her that the landlord's son is moving in, and the landlord has not provided compelling evidence to support her claim.

Taking into careful consideration all the oral and documentary evidence presented, and applying the law to the facts, I find on a balance of probabilities that the landlord has not met the onus of proving the reason for the Two Month Notice, nor that she is acting in good faith.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the tenant is successful in her application, I order the landlord to pay the $100.00 filing fee the tenant paid to apply for dispute resolution.

Pursuant to section 72 of the Act, the tenant is authorized to make a one-time deduction of $100.00 from a future rent payment in satisfaction of the above-noted award.

Conclusion

The tenant's application is granted.

The Two Month Notice is cancelled; the tenancy will continue until it is ended in accordance with the Act.

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 25, 2022

Residential Tenancy Branch