



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RR, CNL, RP, PSF, OLC, FFT

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 Landlord's Use of Property (the 2 Month Notice) pursuant to section 49;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order to the landlord to provide services or facilities required by law pursuant to section 65; 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. 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.

Preliminary Issue

RTB Rule of Procedure 2.3 states that if during a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so; the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply.

I advised both parties that the primary and central issue at this hearing was whether this tenancy was continuing, this was explained in detail and several times to the parties. The remaining portion of the tenant's Application is unrelated to the Application to cancel the 2 Month Notice. I advised both parties that the remaining portion of the tenant's Application; was dismissed with leave to reapply. Both parties indicated that they understood.

Issues to be Decided

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

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

Background and Evidence

The landlords' agent gave the following testimony. The tenancy began on or about August 1, 2015. Rent in the amount of \$1925.00 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 29, 2021 with an effective date of November 30, 2021. The agent testified that she issued the notice on the following two grounds:

2 Month Notice to End Tenancy

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

- *A family corporation owns the rental unit and it will be occupied by an individual who owns, or whose close family members own, all the voting shares...*
- *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...*

The agent testified that her brother and his wife own the home. The agent testified that her parents will be moving into the unit along with her younger brother, his wife and child. The agent testified that at this time there are 11 people living in a three-bedroom home and that is the reason that they wish to have the tenancy end. The agent testified that the tenant is only thinking negative thoughts and that the landlord has no ulterior motive.

The agent testified that her brother bought the home in July 2021 and was told by the previous owner that the tenant was agreeable to a new tenancy agreement with a rent increase. The agent testified that they only spoke about the rent increase on one occasion in August 2021 only because the previous owner had told them to. The agent testified that the landlord has no intention of demolishing the house and building a new one. The agent testified that she isn't sure where the tenant got that idea. The agent requests an order of possession.

The tenant gave the following testimony. The tenant testified that when she first met the owners, they told her that they would be knocking the house down and building a new one. The tenant testified that the landlord then requested that she sign a new agreement at a higher rate. The tenant testified that the news of the landlords' parents moving in is a new one and that was not what she was told at the outset. The tenant believes that the landlords should provide her a proper notice that deals with the demolition of the house only when, they have obtained permits. The tenant does not believe any family member is going to move in.

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 landlord's agent testified that she has not issued a notice before and that she didn't realize that she checked off two of the boxes. Section 52 of the Act addresses the issue before me as follows:

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,
- (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
- (e) when given by a landlord, be in the approved form.

When a landlord issues a Two Month Notice to End Tenancy for Landlords Use of Property, they must indicate the reason for which their ending the tenancy and what they intend to do with the property once the tenancy is over. The notice is not a trivial document that can be done in a casual or "almost correct" way. I find that two reasons noted on the form are not similar and are in fact quite opposite from the other as to who would be occupying the suite. As there are two grounds checked off that differ, this creates ambiguity. As a result, I find that the notice is invalid and therefore is of no effect or force. The tenancy continues.

To be absolutely clear, I have made no finding as to whether the notice was issued in bad faith, but rather, made a finding that the notice was filled out incorrectly and therefore cannot be confirmed and enforced.

As the tenant was only partially successful in this application, they must bear the cost of the filing fee for this application, and I therefore dismiss this portion of their application without leave to reapply.

Conclusion

The Two Month Notice to End Tenancy for Landlords Use of Property is cancelled; it is of no effect or force. The tenancy continues.

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 10, 2022

Residential Tenancy Branch