



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") to cancel a Two Month Notice to End Tenancy for Landlord's Use dated February 12, 2022 ("Two Month Notice"); and to recover the \$100.00 cost of their Application filing fee.

The Tenants, two agents for the Tenants, G.R. and T.B. ("Agents"), the Landlord, and counsel for the Landlord, L.G. ("Counsel"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. One Witness for the Tenants was also present and available to provide affirmed testimony, but she did not do so in the proceeding.

During the hearing, the Tenants and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party and to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

Preliminary and Procedural Matters

The Tenants provided the Parties' email addresses in the Application and they confirmed these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Issue(s) to be Decided

- Should the Two Month Notice be cancelled or confirmed?
- Is the Landlord entitled to an order of possession?
- Are the Tenants entitled to recovery of their \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the periodic tenancy began on January 1, 2018, with a monthly rent of \$1,100.00, due on the first day of each month. The Parties agreed that the Tenants paid the Landlord a security deposit of \$550.00, and no pet damage deposit.

The Two Month Notice was signed and dated December 2, 2021, it has the rental unit address, it was served by posting it to the rental unit door on December 2, 2022, with an effective vacancy date of March 1, 2022, and it was served on the grounds that the rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse, or child; or the parent or child of that individual's spouse). The Landlord specified that his nephew and the nephew's mother would move into the suite once it is vacated.

In the hearing, Counsel said:

It is correct that when the Notice was served, the Landlord indicated that it was required for his nephew. His nephew moved nearby. It was required by the nephew, because he and their mother wanted to stay. But it was not vacated, so he had to rent a basement suite of his own nearby.

Now the situation has changed, as my submission is that the affidavit from [the Landlord's] son is that he has now found employment with a company. in the [area], in January, and he has started working. And he and his girlfriend want to move into this basement suite now, because [the Landlord] is living in this house with two of his daughters, his wife... and there is not enough space where they live.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

When a tenant applies to cancel a notice to end tenancy issued by a landlord, section 55 of the Act requires me to consider whether the landlord is entitled to an order of possession. This is the case if I dismiss the application and if the notice to end tenancy is compliant with section 52 of the Act, as to form and content.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations, the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy. As such, the burden of proof is on the Landlord in this proceeding.

Section 49 of the Act states that a landlord who is an individual may end a tenancy in respect of a rental unit, if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. Section 49 (1) defines "close family member" as follows:

49 (1) In this section:

"close family member" means, in relation to an individual,

- (a) the individual's parent, spouse or child, or
- (b) the parent or child of that individual's spouse;

A landlord is not authorized by the Act to displace a tenant in order to move a nephew or the nephew's mother into the rental unit.

I find that the Two Month Notice is inconsistent with section 52, as to form and content, as well as section 49 (1), as the persons identified to move into the rental unit are not "close family members", as defined by the Act. Accordingly, I grant the Tenants' request and **I cancel the Two Month Notice** and find that it is void and unenforceable.

Given their success in this Application, I also grant the Tenants recovery of the \$100.00 Application filing fee from the Landlord, pursuant to section 72 of the Act. The **Tenants are authorized to deduct \$100.00** from one upcoming rent payment in complete satisfaction of this award.

Conclusion

The Tenants are successful in their Application to cancel the Two Month Notice, as the Landlord's intended occupants of the suite are inconsistent with the requirements of section 49 (1) of the Act. The One Month Notice is cancelled and is void and unenforceable. The tenancy will continue until ended in compliance with the Act.

The Tenants are awarded recovery of their **\$100.00** Application filing fee for this proceeding. They are authorized to deduct \$100.00 from one upcoming rent payment in complete satisfaction with the award.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 31, 2022

Residential Tenancy Branch