



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL MNDCT FFT

Introduction

This hearing dealt with the tenants' application pursuant to section 67 of the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice"), pursuant to section 49;
- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to recover the filing fee for this application from the respondent, pursuant to section 72.

While the tenant MZ attended the hearing by way of conference call, the landlord did not. I waited until 11:14 a.m. to enable the landlord to participate in this scheduled hearing for 11:00 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the tenant and I were the only ones who had called into this teleconference.

The tenant was clearly informed of the RTB Rules of Procedure Rule 6.11 which prohibits the recording of a dispute resolution hearing. The tenant confirmed that they understood.

The tenant provided sworn testimony that he had attempted to personally serve the landlord with the tenants' application and evidence package on October 17, 2021, but the landlord had refused service. The tenant testified that he then contacted the landlord's son, who often acted as agent for their father, and whom he accepted service of the package by way of email on October 17, 2021. In accordance with sections 88 and 89 of the *Act*, I find that the landlord duly served with the tenant's application and evidence. The landlord did not submit any written evidence for this hearing.

The tenant confirmed receipt of a 2 Month Notice to End Tenancy for Landlord's Use on October 1, 2021. In accordance with section 88 of the *Act*, I find the tenants duly served with the 2 Month Notice.

Issues(s) to be Decided

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

Are the tenants entitled to the monetary order requested?

Are the tenants entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began approximately 5 years ago. Monthly rent is currently set at \$1,280.00, payable on the first of the month. The tenants still currently reside at the home.

The tenants were served with a 2 Month Notice on October 1, 2021, with an effective date of December 1, 2021 for the following reason:

- 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 tenants dispute that the 2 Month Notice was issued in good faith. The tenant testified that the landlord wanted to end the tenancy in order to house their employees.

The tenants also filed a monetary claim of \$960.00, stating that the "rent was raised due to insurance premiums even though fireplace is not up to code and railing are not installed on deck that's 4' high".

Analysis

Subsection 49(3) of the *Act* sets out that a landlord 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.

Residential Tenancy Policy Guideline 2: Good Faith Requirement When Ending a Tenancy states:

“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 that they do not have an ulterior motive for ending the tenancy.”

Although the landlord stated on the 2 Month Notice that they had issued the 2 Month Notice in order for the landlord or a close family member to move in, I find that the tenants had raised doubt as to the true intent of the landlord in issuing the 2 Month Notice. The burden, therefore, shifts to the landlord to establish that they do not have any other purpose to ending this tenancy.

By failing to attend to hearing, or provide any written evidence in support of the 2 Month Notice, I find that the landlord has failed to establish that the 2 Month Notice was issued in good faith.

Accordingly, I allow the tenants’ application to cancel the 2 Month Notice. The landlord’s 2 Month Notice, dated October 1, 2021 is hereby cancelled and is of no force and effect. This tenancy is to continue until it is ended in accordance with the *Act*.

The tenants are also seeking a monetary order for compensation related to this tenancy. Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant

must prove the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenants to prove, on a balance of probabilities, that the landlord had caused the losses claimed.

In light of the disputed testimony and evidence before me, I am not satisfied that the tenants had sufficiently supported their monetary claim.

As noted in Rule 6.6 of the Residential Tenancy Branch *Rules of Procedure*:

6.6 The standard of proof in a dispute resolution hearing 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. In most circumstances this is the person making the application.

I find that the tenants failed to meet the standard of proof required to support their monetary claim. Accordingly, the tenants' monetary claim is dismissed without leave to reapply.

I allow the tenants to recover the filing fee as they were successful with their application to cancel the 2 Month Notice.

Conclusion

The tenants' application to cancel the landlord's 2 Month Notice is allowed. The Landlord's 2 Month Notice, dated October 1, 2021, is cancelled and is of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

I issue a \$100.00 Monetary Order in favour of the tenant for recovery of the filing fee. I allow the tenants to implement the above monetary award by reducing future monthly rent payment until the amount is recovered in full.

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 01, 2022