



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, RP, 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. On January 18, 2022 the Tenants applied for:

- an order to cancel a Two Month Notice for Landlord's Use, dated January 6, 2022 (the Two Month Notice);
- an order for repairs made to the unit, site, or property, having contacted the Landlord in writing; and
- the filing fee.

The hearing was attended by the Tenants and the Landlord. 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.

Tenant SR testified he served the Notice of Dispute Resolution Proceeding (NDRP) and the Tenants' evidence on the Landlord in person on February 2, 2022. The Landlord confirmed she received the documents as described. I find the Tenants served the Landlord in accordance with section 89 of the Act.

The Landlord testified she served responsive evidence on the Tenants by email on February 3, 2022 and by registered mail on March 18, 2022. SR confirmed he received the Landlord's evidence. I find the Landlord served the Tenants in accordance with section 88 of the Act.

Preliminary Matter

The Residential Tenancy Branch Rules of Procedure 2.3 states:

2.3 Related issues Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As it is not related to the central issue of whether the tenancy will continue, I dismiss, with leave to reapply, the Tenants' claim for an order for repairs made to the unit, site, or property.

Issues to be Decided

- 1) Are the Tenants entitled to an order cancelling the Two Month Notice?
- 2) If not, is the Landlord entitled to an order of possession?
- 3) Are the Tenants entitled to the filing fee?

Background and Evidence

Those present agreed on the following particulars of the tenancy. It began May 1, 2020; rent is \$2,800.00, due on the first of the month; and the Tenants paid a security deposit of \$1,400.00, which the Landlord still holds.

The Landlord testified she served the Two Month Notice on the Tenants in person on January 7, 2022, by handing it to Tenant DP. DP confirmed he received the Two Month Notice as described.

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.

The Two Month Notice indicates the tenancy is ending because the father or mother of the Landlord or Landlord's spouse will occupy the unit.

The Landlord testified that as her parents are having issues in their relationship, her mother is living with the Landlord in one city, and her father is living by himself in another city, and has been doing so for the past year.

The Landlord testified that in January 2022, her father fell and hurt his knee.

The Landlord testified she is worried about her father's mental health, as each time she calls him, he cries for a few minutes before the Landlord can settle him.

The Landlord testified that as she is a single mother with a busy schedule, and tries to visit her father monthly. The Landlord testified that if her father lived in the same city as the Landlord, the Landlord would be able to visit him frequently and bring her children.

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

SR testified that the Landlord told the Tenants she wanted to do renovations and sell the property, and asked the Tenants to sign a mutual agreement to end the tenancy (MATE), which they refused. Then within a day, the Landlord gave the Tenants a different reason for taking back the rental unit, which led the Tenant's to question that the Landlord was acting in good faith. The Tenants submitted as evidence a copy of their relevant email correspondence with the Landlord, which contains the following:

- January 2, 2022 – Landlord states that she needs to sell the house, wants to do some renovations, and asks the Tenants to sign a MATE
- January 4, 2022 – Tenants tell the Landlord they do not wish to sign the MATE, and ask how they can accommodate the renovations
- January 4, 2022 – Landlord tells the Tenants she does not think it realistic for the Tenants to remain in the unit during renovations, and states: "I really need to sell the house."
- January 5, 2022 – Landlord tells the Tenants that she will be issuing a notice to end tenancy for landlord's use of property, as she would like to take the property back for her own use.

In a second email on the same date, the Landlord tells the Tenants that she decided not to sell the property, but to take it back for her own use, so that her parents can move into the property.

The Tenants submitted as evidence a copy of text correspondence with the Landlord, which illustrates a long-standing conflict around whether the Tenants or the Landlord is responsible for a mould problem in the house. The Landlord states that in order to deter mould, last year she asked the Tenants to keep the house above 16 degrees, which they have not, and that last year she and her father helped the Tenants clean up the mould.

The Tenants' application states that the Landlord was "irate about mold damage she felt was out fault."

The Landlord testified that the reason she told the Tenants that she wanted to take the house back in order to sell it, was because she was frustrated with how they care for the property. The Landlord testified she does not want to sell the property in the near future.

The Landlord testified that after she told the Tenants she wanted to sell the property, she had a discussion with her father, and asked him if he wanted to move to the city where the Landlord lives and the rental property is located.

Analysis

Based on the testimony of the parties, I find the Landlord served the Two Month Notice on the Tenants in person on January 7, 2022, 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 his testimony, SR has indicated that the Landlord has not served the Two Month Notice in good faith.

The Landlord has provided limited evidence, much of which does not pertain to her father moving into the rental unit. I also note that the Landlord's father did not attend the hearing, and the Landlord did not call him as a witness to testify.

SR testified that after the Landlord asked the Tenants to sign a mutual agreement to end the tenancy so she could do renovations and sell the house, which the Tenants refused, within a day the Landlord had changed her reason for evicting the Tenants. The Tenants submitted as evidence the email correspondence.

The Landlord testified that the reason she told the Tenants she wanted them to move out so she could sell the home was because she was frustrated with them, and that in fact she did not have plans to sell the property.

I find that the foregoing call into question the Landlord's claim that her father will move into the rental unit, and that the Landlord is acting in good faith.

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 Tenants are successful in their application, I order the Landlord to pay the \$100.00 filing fee the Tenants paid to apply for dispute resolution.

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

Conclusion

The Tenants' 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: April 27, 2022

Residential Tenancy Branch