



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on January 17, 2022 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") dated January 6, 2022;
- an order granting the return of the filing fee.

The Tenant D.G., the Landlords, the Landlords' Counsel J.K. and the Landlords' Agent J.C. attended the hearing at the appointed date and time.

During the hearing, the Tenant confirmed that he served the Notice of Hearing to the Landlords, which was confirmed received by the Landlords. The Tenant confirmed receipt of the Landlords' documentary evidence. As such, I find that the above mentioned documents were sufficiently served pursuant to Section 71 of the *Act*. While the Tenant submitted evidence in support of his Application to the Residential Tenancy Branch, the Tenant confirmed that he did not serve a copy of the evidence to the Landlords prior to the hearing.

Preliminary Matters

Rules of Procedure 3.17 indicates that evidence not provided to the other party in accordance with the *Act*, may or may not be considered during the hearing. I accept that the Tenant did not serve their evidence to the Landlord for them to review, consider, and respond to during the hearing; therefore, the only evidence I will consider from the Tenant is their oral testimony during the hearing.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Are the Tenants entitled to an order to cancel a Two Month Notice, pursuant to Section 49 of the *Act*?
2. Are the Tenants entitled to an order granting the return of the filing fee, pursuant to Section 72 of the *Act*?
3. If the Tenants are not successful in cancelling the Two Month Notice, are the Landlords entitled to an Order of Possession pursuant to section 55 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the periodic tenancy began on May 1, 2013. The Tenants pay rent in the amount of \$700.00 to the Landlords on the first day of each month. The Tenants paid a security deposit in the amount of \$325.00 which the Landlords continue to hold. The Landlords provided a copy of the tenancy agreement in support.

The Landlords' Counsel stated that the Landlords served the Tenants in person with the Two Month Notice on January 6, 2022, with an effective vacancy date of March 31, 2022. The Tenant confirmed having received the Two Month Notice on the same day. The Landlords' reason for ending the tenancy on the Two Month Notice is;

"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 Landlords' Counsel submitted the following:

The Landlords own the rental property, in which the Landlords and their three children occupy the upper portion of the home, while the Tenants occupy the lower portion as a rental unit. The Landlords' daughter is 20 years old and is currently attending University full time and works part time. The Landlords are seeking to end the tenancy in order for their daughter J.C. to take over the rental unit for her own use. The Landlords' daughter is seeking to gain independence as an adult, and is also needing a space that is free of distractions in order to complete her schooling. The Landlords and their daughter provided affidavits, proof of attending University and confirmation of employment in support. The Landlords had purchased the property in 1999 with the immediate intent to rent the lower portion of the home until such a time that their growing family required the additional space, at which point they would reclaim the space for their own use.

In response, the Tenant stated that he feels as though the Landlords have served the Two Month Notice in bad faith. The Tenant referred to previous unsuccessful attempts made by the Landlords to end the tenancy for cause as well as for unpaid rent. The Tenant stated that the one-month notice served to the Tenant in retaliation to a previous disagreement and was for invalid reasons. The Tenant stated that the Notice was set aside in a previous Dispute Resolution Decision. The Tenant confirmed that the 10 Day Notices he received related to delays experienced by the Tenant in providing rent to the Landlords.

The Tenant stated that the Landlords are in a position to afford to pay for a rental unit for their daughter to occupy rather than ending the tenancy. Furthermore, the Tenant stated that the Landlords have numerous vehicles and that their daughter has a good paying job.

The Tenant referred to other instances in which the Landlords were untruthful. The Tenant referred to an incident in 2019, where the Landlords denied colliding with the Tenant's vehicle in the driveway. Furthermore, the Tenant stated that the Landlords dismantled a table that belonged to the Landlord but was being used by the Tenants in the backyard. The Tenant also state that the Landlords had previous permitted the Tenants to use garden space in the backyard, before revoking such access.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Subsection 49(3) of the Act sets out that a landlord may end a tenancy in respect of a rental unit where the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. The Landlords Counsel stated that the Landlords' daughter intends to occupy the rental unit in order gain some independence and to have her own space, free of distractions from her siblings in order to complete her schooling.

The Landlords served the Tenants in person with the Two Month Notice on January 6, 2022 with an effective vacancy date of March 31, 2022. The Tenant confirmed having received the notice on the same date. I find the Two Month Notice was sufficiently served pursuant to Section 88 of the Act.

According to subsection 49(8) of the Act, a Tenant may dispute a notice to end tenancy for Landlord's use by making an application for dispute resolution within fifteen days after the date the Tenant receives the notice. The Tenant received the Two Month Notice on January 6, 2022 and filed the Application on January 17, 2022. Therefore, the Tenants are within the 15 day time limit under the Act.

While the Tenant described some instances relating to conflicts and dishonest actions from the Landlords during the tenancy, I find I am not able to consider the Tenant's evidence given it was not served to the Landlords. As such, I find that the Tenant provided insufficient evidence to demonstrate that the Two Month Notice was served in bad faith.

In contrast, I find that the Landlords provided sufficient evidence to demonstrate that is more likely than not that they intend to reclaim the basement of the rental property for their daughter to occupy as she is seeking to gain her independence and to ensure she has her own quiet space free from distractions to complete her schooling.

As such, I dismiss the Tenants' Application to cancel the Two Month Notice, without leave to reapply. The Landlords and the Tenant should be aware that if the Landlords fail to use the rental unit as stated above, then pursuant to section 51 of the Act, the Landlords may be subject to paying the Tenant the equivalent of 12 months' rent as a penalty.

Under section 55 of the Act, when a Tenant's Application to cancel a Notice to End Tenancy is dismissed and I am satisfied that the Notice to End Tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlords an order of possession.

I find that the Two Month Notice complies with the requirements for form and content and I find that the Landlords are entitled to an order of possession effective at 1:00PM on April 30, 2022, pursuant to section 55 of the Act. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Conclusion

The Tenants' Application seeking cancellation of the Two Month Notice dated January 6, 2022, is dismissed without leave to reapply. The Landlords are granted an order of possession effective at 1:00PM on April 30, 2022. The order should be served onto the Tenants as soon as possible and may be filed in the Supreme Court and enforced as an order of that Court.

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 21, 2022

Residential Tenancy Branch