



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL FFT

Introduction

This hearing dealt with the tenants' 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; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord was represented by counsel.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

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

Are the tenants entitled to recovery of their filing fee from the landlord?

Background and Evidence

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 principal aspects of the claim and my findings around each are set out below.

This periodic tenancy originally began in 2019. The rental unit is a detached home. The tenants submit that monthly rent is \$1,600.00 payable on the last day of the previous month. The landlord disagrees and says that rent is \$1,500.00 payable on the first of each month.

A 2 Month Notice dated January 12, 2022 with an effective date of March 31, 2022 was served on the tenants on January 12, 2022. The tenants filed their application for dispute resolution on January 26, 2022.

The 2 Month Notice indicates the reason for this tenancy to end is that the landlord or close family member intends to occupy the rental unit. The landlord submits that they currently reside in another building down the street from the rental unit. The landlord testified they intend to occupy the rental unit and have the landlord's spouse's parents move into their current residence when they relocate from another nearby municipality. The landlord claims they have good faith intention to accomplish the stated purposes on the notice.

Landlord's counsel submits that the landlord's stated purpose meets the requirement of section 49(3) of the Act and says that as there are significant financial penalties pursuant to section 51(2) if the landlord does not accomplish their stated purpose, they must have good faith intentions.

Analysis

Section 49(8)(a) of the *Act* provides that upon receipt of a notice to end tenancy for landlord's use of property issued under subsection (3) or (4) the tenant may, within fifteen days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

I accept the undisputed evidence that the 2 Month Notice was served on January 12, 2022. The tenants filed their application for dispute resolution on January 26, 2022. I therefore find that the tenants are within the time limits provided under the Act to dispute the 2 Month Notice.

When a tenant files an application to dispute a Notice to End Tenancy, the landlord bears the burden to prove the grounds for the 2 Month Notice.

The landlord provided some brief testimony regarding their intention to reside in the rental unit and family plans involving their spouse's parents moving into their current residence. The landlord provided little documentary evidence in support of their submissions and the central argument of counsel appears to be that the landlord must have good faith intentions as there are financial consequences if they do not accomplish their stated goals.

I am not satisfied, on a balance, with the landlord's submissions and evidence. While the landlord makes reference to family members moving into their current residence, they have provided little documentary materials in support and their testimony lacked cogent details. The landlord failed to explain the reason for their spouse's parents to relocate, why they will occupy their current residence rather than the rental unit and what precipitated this decision. I find the vague testimony of the landlord to be insufficient to meet their evidentiary burden.

I find landlord's counsel's suggestion that the landlord must have honest good faith intentions as there are financial consequences to be not a particularly persuasive argument. While the *Act* provides recourses for situations where a landlord issues a 2 Month Notice and does not accomplish the stated purposes, I find it is too great a logical leap to say that the existence of this section of the *Act* should provide evidentiary weight to support the landlord's testimony.

Based on the paucity of the landlord's evidence, I find the landlord has failed to satisfy the burden of proof on a balance of probabilities, and I therefore allow the tenants' application to cancel the 2 Month Notice.

As the tenants were successful in their application, I allow them to recover the filing fee from the landlord. As this tenancy is continuing, they may satisfy this monetary award by making a one-time deduction of \$100.00 from their next scheduled rent payment.

Conclusion

The tenants are successful in their application. The 2 Month Notice is cancelled and of no further force or effect. This tenancy continues until ended in accordance with the *Act*.

The tenants are authorized to make a one-time deduction of \$100.00 from their next scheduled rent payment.

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 26, 2022

Residential Tenancy Branch