



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNL, OLC, MNDCT**

Introduction

This hearing dealt with the tenant's 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;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67.

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 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 landlord testified that they received the tenant's materials and had not served any materials of their own. Based on the undisputed testimonies I find the landlord duly served in accordance with sections 88 and 89 of the *Act*.

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an application must be related to each other and the Arbitrator may dismiss unrelated disputed with or without leave to reapply. In the present case, I find that the portions of the application pertaining to a monetary award and an order that the landlord comply are unrelated to the issue of the 2 Month Notice to End Tenancy. Therefore, I sever and

dismiss the portions of the tenant's application seeking a monetary award and order that the landlord comply with leave to reapply.

Issue(s) to be Decided

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

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.

The parties agree on the following facts. This periodic tenancy began in June, 2016. The current monthly rent is \$1,485.00 payable on the first of each month. A security deposit of \$700.00 and pet damage deposit of \$700.00 were collected and are still held by the landlords. The landlord issued a 2 Month Notice dated January 31, 2022 which the tenants received on that date. The tenants filed an application to dispute the notice on February 9, 2022.

The reason provided on the 2 Month Notice for the tenancy to end is that the rental unit will be occupied by the landlord's close family member, the child of the landlord or their spouse. The landlord gave some testimony that their children are currently residing with them but they wish to let them move out and reside in the rental unit. The landlord provided little detail about the reasons for their child to reside in the rental unit, making vague comments that the rental unit is closer to the downtown core of the municipality. The landlord spoke about their difficulties making mortgage payments and rude interactions with the tenants though they clarified that these factors did not contribute to the issuance of the 2 Month Notice.

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 received on January 31, 2022 and the tenants filed their application for dispute resolution on February 9, 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.

I find insufficient evidence to support the landlord's position on a balance of probabilities. The landlord gave vague testimony about having their child or children reside in the rental unit. The landlord failed to provide details of their intention including family composition, their current living arrangements, what has precipitated this planned move at this time, whether the children would be paying rent to the landlords, why proximity to the downtown core is desirable, or even the age of their children.

Based on the paucity of the landlord's evidence, I find the landlords have 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.

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 balance of the application is dismissed with leave to reapply.

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: May 13, 2022

Residential Tenancy Branch