



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, PSF, OLC, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant April 01, 2022 (the “Application”). The Tenant applied as follows:

- To dispute a Two Month Notice to End Tenancy for Landlord's Use of Property dated March 31, 2022 (the “Notice”)
- For an order that the Landlord provide services or facilities required by the tenancy agreement or law
- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement
- To recover the filing fee

The Tenant appeared at the hearing with I.A. for support. The Landlord appeared at the hearing with D.C. to assist. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

Pursuant to rule 2.3 of the Rules, I told the Tenant at the outset of the hearing that I would consider the dispute of the Notice and dismiss the remaining requests as they are not sufficiently related to the dispute of the Notice. I have considered the dispute of the Notice and request to recover the filing fee. The remaining requests are dismissed with leave to re-apply. This decision does not extend any time limits set out in the *Residential Tenancy Act* (the “Act”).

Both parties submitted evidence prior to the hearing. I confirmed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all relevant evidence provided. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, should the Landlords be issued an Order of Possession?
3. Is the Tenant entitled to recover the filing fee?

Background and Evidence

A written tenancy agreement was submitted, and the parties agreed it is accurate. The tenancy started March 15, 2020, and is now a month-to-month tenancy.

The Notice was submitted. The grounds for the Notice are:

The rental unit will be occupied by the Landlord or the Landlord's close family member.

The Notice is on an old RTB form from 2016 and is only two pages.

D.C. testified that the Notice was posted to the door of the rental unit March 31, 2022. The Tenant testified that they received the Notice April 01, 2022.

D.C. testified as follows. The rental address is a house with an upper and lower suite. The Landlords and their 23-year-old daughter live in the upper suite. The Tenant lives in the lower suite. Each suite has its own kitchen and bathroom. The upper suite is three bedrooms, and the lower suite is two bedrooms. The Landlords' daughter wants more independence and needs more space and is going to move into a bedroom in the lower suite. The Landlords are going to use the entire house as they want to enjoy the full use of their home.

D.C. testified that this tenancy has been a “horrendous” experience for the Landlords and has taken a toll on their mental health and marriage. D.C. testified that the Landlords have no intention of re-renting the lower suite again. D.C. said the Landlords will “get their mental health back” if the Notice is upheld and that the tenancy has been a difficult two years for them.

The Landlord did not provide affirmed testimony at the hearing. D.C. could not point to documentary evidence authored by Landlord R.C. about their intention in relation to the rental unit; however, the Tenant pointed out that there is a letter in evidence from the Landlords which was attached to the Notice. D.C. advised there is no documentary evidence from the Landlords’ daughter about their intention in relation to the rental unit.

The Tenant disputed the Notice on the basis that the Landlords issued it because of the problems in this tenancy, for example, the Tenant making complaints about noise from the upper suite. The Tenant said this is the second time the Landlords have tried to evict the Tenant. The Tenant referred to a March 18, 2022 letter in evidence from the Landlords to the Tenant to support the position that the Landlords are evicting the Tenant due to the Tenant making complaints to the Landlords. The Tenant submitted that the Landlords want to evict the Tenant so they do not have to deal with the Tenant’s complaints.

In reply, D.C. disputed that the letters referred to by the Tenant support the Tenant’s position.

Analysis

The Notice was issued pursuant to section 49(3) of the *Act* which states:

A landlord who is an individual 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.

RTB Policy Guideline 2A addresses ending a tenancy for occupancy by a landlord or close family member and addresses the good faith requirement in section 49(3) of the *Act*.

The Landlords have the onus to prove the grounds for the Notice pursuant to rule 6.6 of the Rules. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts are as claimed.

Pursuant to section 49(8)(a) of the *Act*, the Tenant had 15 days to dispute the Notice. Based on the testimony of both parties, I accept that the Tenant received the Notice April 01, 2022. The Application was filed April 01, 2022, within time.

I find the Notice is not valid for two reasons.

First, section 49(7) of the *Act* requires the Notice to comply with section 52 of the *Act* in form and content. Section 52 of the *Act* requires the Notice be in the approved form. The approved form is the current RTB form. The Notice is on an old RTB form from 2016, not the current RTB form from 2021. The RTB form has changed since 2016, specifically, the form is now four pages not two pages and pages three and four of the current form include important information for tenants. As well, the current form requires a landlord to state on it specifically who will occupy the rental unit whereas the 2016 RTB form did not. Landlords should not be using the old RTB form, the form has been changed for a reason. There is no excuse for using an old RTB form as the current RTB form is readily available on the RTB website. Given the Notice is not on the current RTB form, it is not on the approved form and does not comply with section 52 or 49(7) of the *Act*.

Second, I am not satisfied based on the evidence provided that the Landlords issued the Notice in good faith.

There is no question that there are problems between the Landlords and Tenant in this tenancy as both parties acknowledged this. The issues in this tenancy were noted in a prior RTB Decision issued in March of 2021. The existence of issues between the parties, which D.C. specifically referred to during the hearing, at least raises a question about the good faith requirement in relation to the Notice.

D.C. states that the Landlords intend to use the entire house and their daughter intends to move into the lower suite of the house and that this is the basis for the Notice. However, the Landlord did not provide affirmed testimony at the hearing as to their intention in relation to the rental unit. Landlord R.C. did not appear at the hearing to provide affirmed testimony about their intention in relation to the rental unit. The Landlords' daughter did not appear at the hearing to provide affirmed testimony about

their intention in relation to the rental unit despite it apparently being the daughter's need for space and independence which prompted the Notice to be issued. The only documentary evidence that has been pointed out to me in support of the Notice is the March 31, 2022 letter attached to the Notice and signed by the Landlords. The March 31st letter states that the Landlords' daughter will be occupying the rental unit; however, again, the Landlords have not provided any direct evidence from their daughter about this. Further, the March 31st letter does not say anything about the Landlords using the rental unit as part of their living space, despite this being the position taken by D.C. at the hearing.

In the absence of further compelling evidence, in particular direct evidence from the Landlords' daughter about their intention in relation to the rental unit, I am not satisfied the Landlords have met their onus to prove the grounds for the Notice and the good faith requirement in relation to the Notice. The Notice is therefore cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

Given the Tenant has been successful in the Application, I award them \$100.00 as reimbursement for the filing fee pursuant to section 72(1) of the *Act*. Pursuant to section 72(2) of the *Act*, the Tenant can deduct \$100.00 from their next rent payment.

Conclusion

The Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

The Tenant can deduct \$100.00 from their next 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 *Act*.

Dated: July 25, 2022

Residential Tenancy Branch