



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 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; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties were represented at the hearing and were given an opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord was represented by a family member who acted as agent ("RV") and counsel. In accordance with the *Act*, Residential Tenancy Rule of Procedure 6.1 and 7.17 and the principles of fairness and the Branch's objective of fair, efficient and consistent dispute resolution process parties were given an opportunity to make submissions and present evidence related to the claim. The parties were directed to make succinct submissions, and pursuant to my authority under Rule 7.17 were directed against making unnecessary submissions or remarks not related to the matter at hand.

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. RV testified that they received the tenants' application and evidence and had not served any evidence of their own. Based on the testimonies I find the landlord 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 recover the 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.

The parties agree on the following facts. This tenancy began in 2001. The current monthly rent is \$700.00 payable on the first of each month. The landlord collected a security deposit of \$350.00 which they still hold.

The landlord issued a 2 Month Notice to End Tenancy for Landlord's Use dated March 14, 2022. The reason provided on the notice for the tenancy to end is that the rental unit will be occupied by the landlord's close family member, specifically a child of the landlord. The tenants filed their application to dispute the notice on March 21, 2022.

RV testified that they are the child of the named respondent landlord who intends to occupy the rental property. RV gave sworn testimony that they have been residing with and acting as caregiver to the named respondent landlord for many years. The landlord is now 94 years of age and they are experiencing health issues that accompany the aging process. RV says that the landlord's health is such that it is no longer adequate for them to act as caregiver and a professional third-party live-in caregiver is required. They submit that in order to allow a live-in caregiver to reside with the landlord it is necessary for RV to move out of their current residence. They testified that they intend to occupy the rental unit as it is owned by the family, is in the same municipality as the landlord's residence and in reasonable proximity, and they have no other properties.

The tenants submit that they disbelieve the landlord's good faith intentions and said there was an earlier Notice to End Tenancy for Cause issued by the landlord in 2021. The parties agree that the earlier Notice was withdrawn and cancelled by the landlord. The tenants submit that the repeated issuance of Notices makes them wary of the landlord's 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 received on or about March 14, 2022 and the tenants filed their application for dispute resolution on January March 21, 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's family member and agent RV provided testimony regarding the reasons for the issuance of the Notice, the changes in the health and family circumstances and their intention to occupy the rental unit. The landlord did not provide any documentary evidence in support of their testimony.

While RV provided cogent, consistent testimony I find that there is little independent documentary materials to support their submissions. Given the stated reasons for the intended move: the declining health of the named respondent landlord, it would be reasonable to expect there would be some medical records or recommendations from medical service providers. If the landlord is intending to retain a live-in caregiver, even if they have not finalized the process, it would be reasonable to expect they would be able to provide some information on the agencies they have consulted or the health authorities who are overseeing the care plan.

I find that the testimony of the landlord's family member is insufficient to meet their evidentiary burden on a balance of probabilities.

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: July 8, 2022

Residential Tenancy Branch