



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

Both parties attended the hearing and were given an opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. 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. 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

Are the tenants entitled to the relief sought?

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 May 2019. The current monthly rent is \$1,650.00 payable on the first of each month.

The landlord issued a 2 Month Notice to End Tenancy for Landlord's Use dated March 29, 2022. The tenants confirm receipt of the notice on that date and filed their application to dispute the notice on April 11, 2022. The reason provided on the notice for the tenancy to end is that the rental unit will be occupied by the landlord.

The landlord submitted into evidence a four-page typewritten document stating they intend to occupy the rental unit. The landlord testified about their "nomadic work lifestyle" requiring travel for work and their desire to have a "home base" to return to when not travelling. The landlord submits that they have a sick relative in the municipality and wish to move to be closer to them during this time.

The parties made reference to a separate property owned by the landlord in the same municipality. The landlord submits that property is inappropriate for them and their choice to rent it out to other occupants is irrelevant to their decision to occupy the rental unit.

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 29, 2022 and the tenants filed their application for dispute resolution on April 11,

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 the evidence of the landlord consisting of their testimony and documentary submissions to have little details or information and be of limited probative value. The landlord makes reference to their work, says they have a sick relative in the municipality and submits that the other property is not appropriate for their needs but provides little cogent details or explanation of their statements. The landlord failed to explain why the other property owned is inappropriate, nor have they provided any third-party documentary materials to support the existence of a family member or their health condition.

While I understand the landlord's desire for personal privacy, the onus lies with them to establish on a balance of probabilities the basis for the notice. It was open for the landlord to make submissions, omitting details if they felt it inappropriate or invasive. However, the present submissions of the landlord are so bereft of basic information that I find they have failed to meet their evidentiary onus. I find the landlord has not adequately addressed the central issue of why they intend to occupy the rental unit at this time. I find the landlord's submissions lack details, are not supported in independent documentary materials and are insufficient to meet their evidentiary onus.

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. I am not satisfied that the landlord has the good faith intention to occupy the rental unit as stated on the 2 Month Notice. 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: August 11, 2022

Residential Tenancy Branch