



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking an order cancelling a notice to end the tenancy for landlord's use of property and to recover the filing fee from the landlords for the cost of the application.

Both tenants and both landlords attended the hearing, and the landlords were represented by a sister of one of the landlords, acting as agent for both of the landlords. Each of the tenants and the landlords' agent gave affirmed testimony, and the parties were given the opportunity to question each other. The parties agree that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Have the landlords established that the Two Month Notice to End Tenancy for Landlord's Use of Property dated April 22, 2022 was issued in accordance with the *Residential Tenancy Act* and in good faith?

Background and Evidence

The landlords' agent testified that this fixed term tenancy began on December 15, 2017, which reverted to a month-to-month tenancy after February 28, 2019 with a previous owner. The landlords purchased the property in February, 2022 and took possession on April 1, 2022. The tenants were still residing in the rental unit. Rent in the amount of \$2,000.00 is payable on the 1st day of each month according to the tenancy agreement, and there are no rental arrears. At the outset of the tenancy, the previous landlord collected a security deposit of \$1,000.00 as well as a pet damage deposit of \$1,000.00, both of which are currently held in trust by the current landlords. The rental unit is a 3 bedroom townhouse, and a copy of the tenancy agreement has been provided by the tenants for this hearing.

The landlord's agent further testified that on April 22, 2022 the landlords served a Two Month Notice to End Tenancy for Landlord's Use of Property by personally handing it to one of the tenants. A copy has been provided for this hearing and it is dated April 22, 2022 and contains an effective date of vacancy of June 30, 2022. The reason for issuing it states: The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse), specifying the father or mother of the landlord or landlord's spouse.

The mother of one of the landlords (KS) will be moving into the rental unit, who is currently living in the landlords' residence. The landlord's mother had lived with another brother for 16 years, who sold his property in January, 2021 and moved in with his in-laws on a permanent basis. Initially things were okay, but the landlord's mother wasn't used to living with the landlords. The landlords purchased this property because things were not working for them to live together. Between January, 2021 and the date of issuance of the Notice, dynamics had changed.

The landlords had considered asking the seller for vacant possession, but the rental unit was well kept by the tenants and the market was different. The tenants said they were searching for something to purchase, and it sounded like a short-term situation for a month or so. During discussions on March 14, 2022 the landlords gave the tenants an opportunity to let the landlords know what would work for them, and the landlords tried to come up with a mutual agreement. The tenants had said a maximum of 6 months would suffice in a text message and the landlords agreed. A copy of the text message string has been provided for this hearing, which shows that the texts were shared between the tenants and the landlord's sister. The tenant's text message states that the tenants were okay with a rental increase to \$2,400.00 and were not certain, but expected to vacate within 6 months. The response from the landlord's sister says "OK, that'll work for max 6 months at \$2400 per month," and that the landlords will collect the increased amount of rent on April 1, 2022 and asks that the tenants prepare a notice indicating that the tenants will vacate by September 31, 2022 at the latest. Then on April 3, 2022 the tenants said they wanted to stay indefinitely, so the landlords gave the Notice on April 22 effective June 30, 2022 which is 6 months after the landlords took possession.

The landlord's mother will move in as soon as the tenants move out.

A letter from the realtor has also been provided for this hearing setting out his version of events, and states that the landlord was unhappy, feeling that he had agreed to the tenant's offer through text messages with the landlord's sister, even though he could

have served the tenants with notice to end the tenancy earlier rather than trying to accommodate the tenants.

The first tenant (FV) testified that during the first meeting that the landlords called on February 27, 2022, prior to taking possession of the rental home, they said they couldn't afford 2 properties and didn't want to uproot their children from school, so they were okay with the tenants staying. They also said that they could not afford the current rental amount and fair market value was between \$2,700.00 and \$3,000.00 per month, suggesting a \$2,700.00 increase, but the tenant declined.

The tenants were contacted by the landlord's sister, and the tenants agreed to increase rent to \$2,400.00 per month, but the landlords wanted a fixed term. The tenant did not agree to that, but was non-committal, and contacted the Residential Tenancy Branch and TRAK to discuss the tenants' options. The advice received was that the tenants didn't have to agree to an increase over the allowable amount, and that it was in the tenants' best interest to remain on a month-to-month tenancy. The process of the landlord negotiating with the landlord's sister appeared that they were investors, and perhaps bought the property with the landlord's sister.

The tenant drafted a letter to the new landlords on April 2, 2022, prepared to pay the increase, but requested the landlords follow proper channels to give 3 months notice of the increase. The landlords and a realtor arrived for a meeting that day, prepared with a new lease agreement stating that the tenants would move forward with the increase to \$2,400.00 effective immediately and that the tenants would vacate by September, 2022. The realtor offered to pay the \$1,200.00 difference, so the tenants would pay \$2,000.00 for 3 months and the realtor would pay the \$400.00 per month difference directly to the landlords. There was no indication that the landlords needed the property for family use.

On April 3, 2022 the tenant reached out to the landlord's agent asking for a revised agreement for \$2,400.00 and a month-to-month tenancy. Copies of the exchange of text messages have been provided for this hearing. The tenant also emailed the landlord (KS) stating that the tenants wanted to stay on a month-to-month tenancy and the tenants agreed with the \$400.00 increase. Neither reply mentioned wanting to use the rental property for family use, only to increase the rent.

At 10:00 a.m. on April 22, 2022 the tenant was at work and the landlord requested another meeting with the realtor for later in the day. The parties waited for the landlord's sister to arrive, and the tenant was told that they tried to work it out, but it

didn't work out, and they served the Two Month Notice to End Tenancy for Landlord's Use of Property.

The tenants made notes after each meeting and conversation. The tenants stuck with the increase, but when the tenant didn't agree to other terms, the landlord served the Notice.

After the Notice was served, the tenants discovered that the landlords have a property management company. Considering everything combined, the tenants do not feel the landlords are acting in good faith. The tenants do not believe the landlords require the 3 storey townhouse, containing 3 bedrooms and a den just for the landlord's mother.

The second tenant (JXW) testified that the tenants were first approached on February 24, 2022 by the previous landlord's realtor who said that the new landlords wanted to discuss plans, and from that the tenants expected to receive a notice to end the tenancy when the rental home was purchased.

When the tenants were contacted by the landlord's sister, the tenants were confused because they had given their phone number to the landlord (KS) and expected a conversation with him, not another person.

At the end of the text messages on March 14 the landlords said it will work for 6 months at \$2,400.00 and a new tenancy agreement will be drawn up, which brought up several alerts for the tenants: dealing with the landlord's sister instead of the landlord; why the parties would have to draft a new tenancy agreement; why the tenants would pay the \$400.00 increase on the 1st day that the landlords took possession, which is a breach of the Act. That's why the tenants didn't confirm anything.

While reading the landlord's evidence, it bothered the tenant that things were getting worse for their situation and contacted RTB, but if they needed the property for the landlord's mother, they would have been told to issue a notice to end the tenancy. "If you give us more money you can stay," is what it sounds like. If they had said at the beginning that the landlord's mother would be occupying the rental unit, the tenants would have accepted a notice to end the tenancy, but no one ever said that.

The landlords' evidence also states that the landlord (KS) could empathize with the tenants' situation, but the tenants had no situation; the tenants are professionals, not a charity case; the landlords only wanted to increase the rent. The landlords took it as an opportunity to sign a new tenancy agreement that solely benefits the landlords. The tenant's Legal Counsel said to not sign a new tenancy agreement, and continue on a

month-to-month basis. The landlords' evidence shows that the landlords understand that the tenants don't want to move out, but that doesn't work for the landlords' family. If that's the case then why would the landlords ask for a mutual agreement to benefit only the landlords? If they needed the property, they should have told the tenants that, and the tenants would have no grounds to dispute it. Instead, the landlords wanted \$2,700.00 per month rent, showing ill intent.

The landlords' evidence also states that the tenants have forcefully stayed for as long as they can, however the landlords gave the tenants conflicting stories. They said they could move in but didn't want to uproot their children, and never mentioned the landlord's mother, but when providing evidence, they say that the landlord's mother needs the property.

The landlords try to show that they are acting in the tenants' favour, but are not acting in good faith. The tenants have been given an ultimatum to increase rent or face eviction. The tenants still stand by the increase to \$2,400.00 per month even though they've received advice that they don't have to; the tenants only wanted 3 clear months before paying the increase.

Analysis

Where a tenant disputes any notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. Also, in the case of a Two Month Notice to End Tenancy for Landlord's Use of Property, the onus is on the landlord to establish that the landlords have good faith intent, without ulterior motive, to accomplish the purpose for ending the tenancy as stated in the Notice.

I have reviewed the Notice and I find that it is in the approved form and contains information required by the *Act*. The tenants dispute the landlords' good faith intent.

In this case, the facts are very clear. The landlords purchased the rental property, taking possession on April 1 2022 and the tenants were residing in the rental unit at the time and had been since December 15, 2017.

The tenant (JXW) testified that the tenants were first approached on February 24, 2022 by the previous landlord's realtor who said that the new landlords wanted to discuss the tenants' plans. For the landlords to say that they were acting in good faith to benefit the tenants' situation simply is not true; the landlords had no idea what the tenants' situation was. I also find that the testimony of the landlords' agent that the rental home was

purchased by the landlords for the landlord's mother to reside in is not believable, considering that the landlords never mentioned that during any negotiations, and if it were true, the landlords would have instructed the previous landlord to give a notice to end the tenancy for the new landlords' use of the property. Further, I question why the landlords, who indicated to the tenants that they couldn't afford the current monthly rent, would purchase a 3 bedroom, plus den townhouse for 1 family member to reside in.

In the circumstances, I am not satisfied that the landlords have demonstrated good faith intent. The Two Month Notice to End Tenancy for Landlord's Use of Property is cancelled and the tenancy continues until ended in accordance with the law.

Since the tenants have been successful with the application the tenants are also entitled to recovery of the \$100.00 filing fee. I grant a monetary order in favour of the tenants as against the landlords in that amount, and I order that the tenants may reduce rent for a future month by that amount, or may otherwise recover it.

Conclusion

For the reasons set out above, the Two Month Notice to End Tenancy for Landlord's Use of Property dated April 22, 2022 is hereby cancelled and the tenancy continues until it is ended in accordance with the law.

I hereby grant a monetary order in favour of the tenants as against the landlords pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00 and I order that the tenants be permitted to reduce rent for a future month by that amount or may otherwise recover it.

This order is final and binding and may be enforced.

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 26, 2022

Residential Tenancy Branch