



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, LRE, FFT

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a residential tenancy dispute. The tenant applied on April 6, 2022 for:

- an order to cancel a Two Month Notice for Landlord's Use, dated March 23, 2022 (the Two Month Notice);
- an order to suspend or set conditions on the landlord's right to enter the rental unit; and
- the filing fee.

Attending the hearing were the administrator of the tenant's estate, the landlord, and the landlord's counsel. The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings, and Rule 7.4 requiring evidence to be presented.

Neither party raised an issue regarding the service of documents.

Preliminary Matters

Tenant Deceased

The administrator of the tenant's estate, MP, testified that the tenant is now deceased, and that MP sought to have the tenant's stepson and step granddaughter continue to reside in the rental unit.

In accordance with section 64(3)(c) and Residential Tenancy Policy Guideline 43, I have amended the dispute to name the personal representative of the tenant, as noted on the cover page of the decision.

As the definition of “tenant” in the Act includes the estate of a deceased tenant, in the decision I will continue to refer to “the tenant.”

Related Issues

The Residential Tenancy Branch Rules of Procedure 2.3 states:

2.3 Related issues Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As it is not related to the central issue of whether the tenancy will continue, I dismiss, with leave to reapply, the tenant’s claim for an order to suspend or set conditions on the landlord’s right to enter the rental unit.

Issues to be Decided

- 1) Is the tenant entitled to an order cancelling the Two Month Notice?
- 2) If not, is the landlord entitled to an order of possession?
- 3) Is the tenant entitled to the filing fee?

Background and Evidence

While I have considered the presented documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties’ claims and my findings are set out below.

The parties agreed on the following particulars of the tenancy. It began on March 15, 2014; rent is \$975.00, due on the first of the month; and the tenant paid a security deposit of \$487.50, which the landlord still holds.

The Two Month Notice indicates the tenancy is ending because the landlord is family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

The landlord testified they served the Two Month Notice on the tenant by registered mail on March 23, 2022. The tenant's application indicates he received the Notice by registered mail on March 25, 2022.

Landlord's counsel testified it will be the landlord residing in the rental unit, and that as the landlord owns an undivided half interest in the property, she is able to serve the Two Month Notice.

Counsel testified that the second tenant listed on the tenancy agreement is also deceased. Counsel testified that there may be 4 adults occupying the rental unit, and that if the tenant's stepson is residing in the rental unit, he is an unauthorized occupant. Counsel testified the landlord does not know who is residing in the rental unit.

Administrator MP provided testimony regarding the tenant's close relationship with his stepson, and that his stepson has lived in the rental unit for many years. MP stated that the step granddaughter had been there for an unknown length of time, and that the step granddaughter's boyfriend does not live there, but "hangs around."

MP testified that she pays the rent, though last month she had the stepson do so, as MP was having difficulty using her phone to complete banking transactions.

The tenant's application indicates that he believed the landlord was not acting in good faith. It states:

Please describe the reason(s) you are disputing this Two Month Notice to End Tenancy:

I Believe I'm being ~~being~~ evicted under false pretense. and not in the landlords good faith. She used ^{the same} reason for eviction. on the previous tenant who occupied my unit.

MP submitted that she does not know how long the landlord intends to reside in the rental unit, and that the rental is not as nice as where the landlord currently lives.

MP testified that rents are very high in the subject city, and the landlord wants the tenancy to end as she wants to charge a higher rent. MP testified that she contacted the RTB after the landlord told the occupants on May 30, 2022 that she wanted them out the following day.

MP testified that the former tenant referred to in SP's application had also been given the same reason for eviction by the landlord: because family would be moving in.

Landlord's counsel submitted that the previous tenant had been evicted for subletting, not for landlord's use of property.

Landlord's counsel submitted that the landlord is acting in good faith.

Analysis

Based on the evidence provided by the parties, I find the landlord served the Two Month Notice on the tenant by registered mail on March 23, 2022, in accordance with section 88 of the Act, and that the tenant received the Notice on March 25, 2022.

I find that the Two Month Notice meets the form and content requirements of section 52.

The standard of proof in a dispute resolution is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

As described in Residential Tenancy Branch Rule of Procedure 6.6, when a tenant applies to dispute a notice to end tenancy, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice is based. And, as noted in [Residential Tenancy Policy Guideline 2A: Ending a Tenancy for Occupancy by Landlord, Purchaser, or Close Family Member](#), when the issue of a dishonest motive or purpose for ending the tenancy is raised by a tenant, the onus is on the landlord to establish they are acting in good faith.

Policy Guideline 2A explains that good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant, they do not have an ulterior purpose for ending the tenancy, and they are not trying to avoid obligations under the Act or the tenancy agreement.

MP submitted that the landlord may be seeking to end the tenancy so as to charge more rent. This is a reasonable assertion, given the length of the tenancy.

Landlord's counsel submitted that the landlord is acting in good faith, but did not present evidence in support, such as specifics around the landlord's plans to move, or the landlord's motivation for moving into the rental property at this time.

Taking into careful consideration all the oral and documentary evidence presented, and applying the law to the facts, I find on a balance of probabilities that the landlord has not met the onus of proving the reason for the Two Month Notice, nor that they are acting in good faith.

Therefore, the Two Month Notice is cancelled; the tenancy will continue until it is ended in accordance with the Act.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the tenant is successful in their application, I order the landlord to pay the \$100.00 filing fee the tenant paid to apply for dispute resolution.

Pursuant to section 72 of the Act, the tenant is authorized to make a one-time deduction of \$100.00 from a future rent payment in satisfaction of the above-noted award.

Conclusion

The tenant's application is granted.

The Two Month Notice is cancelled; the tenancy will continue until it is ended in accordance with the Act.

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 15, 2022

Residential Tenancy Branch