



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFT, CNL, OLC**

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;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- 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*.

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an application must be related to each other and the Arbitrator may dismiss unrelated disputed with or without leave to reapply. In the present case, I find that the portions of the application seeking a monetary award, a determination on past rent increases, repairs and damage awards under an order that the landlord comply are unrelated to the issue of the 2 Month Notice to End Tenancy. Therefore, I sever and dismiss the portions of the tenants' application seeking an order that the landlord comply with leave to reapply.

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. The landlord assumed this tenancy when they purchased the rental property in or about 2016. The current monthly rent is \$900.00 payable on the first of each month.

The landlord issued a 2 Month Notice dated April 20, 2022 with an effective date of June 30, 2022. The reason provided on the notice for the tenancy to end is that the rental unit will be occupied by the landlord or their spouse.

The landlord submitted into documentary evidence 31 pages of materials including written submissions and screenshots of ongoing text message exchanges with the tenants. The landlord gave testimony about ongoing conflict with the tenants, their preventing the landlord from accessing the property, threats of violence and damage to the rental property. The landlord said that these ongoing issues are not an ulterior motive to their issuance of the 2 Month Notice and they intend to occupy the rental property.

The landlord said that they reside in a neighboring province and intend to move to the rental unit as they have been finalizing a divorce over the past several years. The landlord did not explain whether they are currently employed in the place they reside, what they intend to do for income in the municipality of the rental unit, nor why the property was chosen to be their residence. The landlord's documentary evidence

makes little reference to their intended use of the property and primarily lists the landlord's complaints about the tenants' behaviour and ongoing conflicts.

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 April 20, 2022 and the tenants filed their application for dispute resolution on April 29, 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 provide little details of their intended use of the property and dwell primarily on the ongoing dispute with the tenants. The landlord gave some testimony about the dissolution of their marriage precipitating their intended move but provided little cogent details, further explanation or documentary materials to support their statement. The landlord failed to explain why they intend to relocate from another province nor have they addressed issues such as their employment situation or why they chose this rental property to be their residence.

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.

I further note that the landlord's written submissions and most of their testimony dealt with their displeasure with the conduct of the tenants and details of their ongoing conflicts.

Residential Tenancy Branch Policy Guideline number 2 notes that good faith is an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage. A claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End the Tenancy.

This Guideline reads in part as follows:

If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy. If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive for ending the tenancy.

I find the landlord's own evidence shows that they have significant other reasons for wanting to end this tenancy. I find the landlord's focus on the ongoing conflicts and their complaints gives sufficient doubt about their bona fide intention.

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' application to cancel the 2 Month Notice is allowed. The 2 Month Notice is of no continuing force or effect. This tenancy will continue until ended according to the *Act*.

The tenants are entitled 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 29, 2022

Residential Tenancy Branch