



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, RP, FFT (Tenant)
 OPL, FFL (Landlords)

Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties.

The Tenant filed their application May 10, 2022 (the “Tenant’s Application”). The Tenant applied as follows:

- To dispute a Two Month Notice to End Tenancy for Landlord's Use of Property dated April 24, 2022 (the “Notice”)
- For a repair order
- To recover the filing fee

The Landlords filed their application May 18, 2022 (the “Landlords’ Application”). The Landlords applied as follows:

- For an Order of Possession based on the Notice
- To recover the filing fee

The Tenant appeared at the hearing. Landlord S.P.W. appeared at the hearing with N.T. and C.F. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

Pursuant to rule 2.3 of the Rules, I told the Tenant at the outset of the hearing that I would consider the dispute of the Notice and dismiss the request for a repair order because it is not sufficiently related to the dispute of the Notice. The request for a repair

order is dismissed with leave to re-apply. This decision does not extend any time limits set out in the *Residential Tenancy Act* (the “Act”).

Both parties submitted evidence prior to the hearing. I confirmed service of the hearing packages and evidence, and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all evidence provided. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, should the Landlords be issued an Order of Possession?
3. Is the Tenant entitled to recover the filing fee?
4. Are the Landlords entitled to recover the filing fee?

Background and Evidence

The parties agreed there have been two written tenancy agreements in this matter. The parties agreed the tenancy started in 2019.

The Notice was submitted. The grounds for the Notice are that the rental unit will be occupied by the child of the Landlords.

The parties agreed the Notice was served, and received by the Tenant, April 26, 2022.

C.F. testified that the Landlords’ son intends to move into the rental unit. Landlord S.P.W. testified that their son, D.W., intends to move into the rental unit. C.F. acknowledged the Landlords have not submitted any evidence from D.W.

The Tenant disputed that the Notice was issued in good faith and submitted that the Landlords are simply trying to remove the Tenant from the rental unit and are attempting to avoid addressing repair issues in the rental unit.

Analysis

The Notice was issued pursuant to section 49(3) of the *Act* which states:

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Pursuant to section 49(8)(a) of the *Act*, the Tenant had 15 days to dispute the Notice. The Tenant received the Notice April 26, 2022, and disputed it May 10, 2022, within time.

RTB Policy Guideline 2A deals with ending a tenancy for occupancy and the good faith requirement. As stated on page three, when the issue of good faith is raised, the onus is on the landlord to establish they are acting in good faith.

Further, the Landlords have the onus to prove the grounds for the Notice pursuant to rule 6.6 of the Rules. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts are as claimed.

I am not satisfied based on the evidence provided that the Landlords have proven the grounds for the Notice because the Landlords claim D.W. intends to move into the rental unit yet have provided no evidence from D.W. about this. I do not find testimony from others, such as C.F. and Landlord S.P.W., about D.W.'s intentions in relation to where they live and the rental unit sufficiently compelling to meet the standard of proof in the absence of some evidence from D.W. Further, the Tenant has raised the issue of good faith and the Landlords must prove the Notice was issued in good faith. I find the Landlords have failed to prove the good faith requirement by failing to present any evidence from D.W. who they claim intends to move into the rental unit.

Given the above, the Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

Given the Tenant has been successful in the Tenant's Application, I award them \$100.00 as reimbursement for the filing fee pursuant to section 72(1) of the *Act*. Pursuant to section 72(2) of the *Act*, the Tenant can deduct \$100.00 from their next rent payment.

The Landlords are not entitled to recover their filing fee because they have not been successful in the Landlords' Application.

Conclusion

The Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

The Tenant can deduct \$100.00 from their next rent payment as reimbursement for the filing fee.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: September 23, 2022

Residential Tenancy Branch