



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 tenants' 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 ("2 Month Notice") pursuant to section 49 of the *Act*; and
- Return of the filing fee pursuant to section 72 of the *Act*.

Both parties attended the hearing. The tenants were represented at the hearing by tenant F.C. (the "tenant"), while the landlord was represented by agent M.C. All parties were given a full opportunity to be heard, to present their sworn testimony and to make submissions.

Both parties confirmed they were not recording the hearing pursuant to Rule of Procedure 6.11.

The tenant confirmed receipt of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice") after it was served via email on April 30, 2022.

The landlord's agent confirmed receipt of the tenants' application for dispute and evidentiary package, while the tenant confirmed receipt of the landlord's evidentiary package. Both parties are found to have been served with these documents in accordance with the *Act*.

Issue(s) to be Decided

Can the tenants cancel the landlord's 2 Month Notice?
Are the tenants entitled to a return of the filing fee?

Background and Evidence

The parties confirmed this tenancy began on April 1, 2019. Rent is \$3,400.00 per month and a security deposit of \$1,700.00 paid at the outset of the tenancy continues to be held in trust.

On April 30, 2022, the landlord served the tenants with a 2 Month Notice. The reason cited on the notice was indicated as follows:

- The rental unit will be occupied by the landlord or the landlord's close family member...the father or mother of the landlord or the landlord's spouse.

The landlord's agent F.C. explained landlord's parents intended to occupy the home as part of their retirement. F.C. stated the landlord currently lives in Vancouver, however, the landlord's parents live in Taiwan and that they are recently retired and will be using the property as their retirement home. F.C. said the landlord's parents are presently in Vancouver, however, plan to return to Taiwan as the rental unit in question is not presently available for them to occupy. F.C. noted a renovation to the bathroom that would be required prior to occupation due to the parents advanced age.

As part of the landlord's evidentiary package, the landlord provided a copy of the 2 Month Notice, a screen shot of an untranslated text message, an email account screen shot, a phone log, email correspondence and a letter signed by owner M.H.H. This letter is undated and states amongst other information, "As pandemic eases and the international travel restrictions lifted (sic), my parents will move to Vancouver and reside at this property. This is the reason to end tenancy."

The tenants disputed the landlord's intentions and motivation for ending the tenancy. The tenants argued that they had understood the property would eventually be occupied by the landlord himself in "8 to 10 years" and had therefore felt comfortable entering a tenancy with the landlord.

Analysis

Rule of Procedure 6.6 notes, "The standard of proof in a dispute resolution hearing 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. In most circumstances that is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy."

Section 49(3) of the *Act* states that a landlord may end a tenancy in respect of a rental unit where the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

After having considered the testimony of both parties and having reviewed the evidence submitted by the landlord, I find the landlord has failed to provide sufficient evidence that their parents intend to occupy the rental unit. While I found the landlord's agent to be credible, I find the lack of detail around the occupation of the unit to be problematic. Specifically, the landlord's agent provided very little information concerning the specific dates the landlord's parents intended to move to Vancouver, the frequency of their occupation or their current housing situation. I find there is insufficient evidence related to the specific plans of the landlord's parents to occupy the rental unit as the landlord himself provided only a brief, undated written statement, and no information was provided by the people who intend to occupy the unit.

For these reasons, I dismiss the landlord's 2 Month Notice to End Tenancy dated April 30, 2022. This tenancy shall continue until it is ended in accordance with the *Act*.

The tenants may recover the \$100.00 filing fee.

Conclusion

The tenants were successful in cancelling the landlord's 2 Month Notice dated April 30, 2022. This tenancy shall continue until it is ended in accordance with the *Act*.

The tenants may withhold \$100.00 from a future rent payment on **ONE** occasion in full satisfaction for a return of 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 *Residential Tenancy Act*.

Dated: September 21, 2022

Residential Tenancy Branch