



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, CNL, OPL, FFL

Introduction

This hearing dealt with cross applications pursuant to the *Residential Tenancy Act* (the *Act*) the landlord applied for:

- an Order of Possession pursuant to section 55; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlords Use of Property (the 2 Month Notice) pursuant to section 49; and
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so.

All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation. All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I explained the hearing and settlement processes to both parties. Both parties had an

opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing, they did not want to settle this application, and they wanted me to make a decision regarding this application. Neither party made any adjournment or accommodation requests. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Should the Two Month Notice to End Tenancy be cancelled? If not, is the landlord entitled to an order of possession?

Should an order be made to compel the landlord to comply with the Act, regulation or tenancy agreement?

Is the landlord entitled to the recovery of the filing fee for this application from the tenant?

Background and Evidence

CC gave the following testimony. The tenancy began on February 1, 2018 with the monthly rent of \$2436.00 due on the first of each month. The tenant paid a security deposit of \$1200.00 which the landlord still holds. CC testified that the landlord/owner purchased the property in March 2018 and planned to move into it so that his grandson could live with him and go to the nearby school. JG testified that the landlord's agent served the tenant the Two Month Notice to End Tenancy for Landlords Use of Property on May 30, 2022 with an effective date of July 31, 2022 for the following reason:

- *The rental unit will be occupied by the landlord or the landlord's spouse*

CC testified that the owner wanted to assist his son and daughter in law in raising his grandson. CC testified that due to the pandemic those plans were delayed. CC testified that the owner lived in China but moved to Canada in April 2022. CC testified that the mail that the tenant alleges is a new incoming tenant, is in fact the owner's daughter in law. CC testified that the tenant has made registering the owner's grandson difficult by returning import mail to the sender and refuses to vacate the property even though the effective date has passed. CC requests an order of possession.

SM testified that he does not believe that the landlord has issued the notice in good faith. SM testified that he doesn't believe that the owners will move in, nor does he

believe they live in the country. SM testified that he “thinks” that the landlord is going to re-rent the unit at a higher rate and that he already found another tenant. SM testified that the mail sent to the house is proof that “another Chinese National” is moving in and that the owner will not be occupying the home. SM testified that the agents’ story about the landlord moving in to help with his grandson is a “bunch of baloney”. SM testified that he thinks the notice should be cancelled and that his tenancy should continue.

RB testified that the landlords story is full of inconsistencies and should not be accepted.

Analysis

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 tenant has called into question whether the landlord has issued the notice in good faith. Residential Tenancy Policy Guideline 2 addresses the “good faith requirement” as follows.

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 might be documented through:

a Notice to End Tenancy at another rental unit;

an agreement for sale and the purchaser’s written request for the seller to issue a Notice to End Tenancy; or

a local government document allowing a change to the rental unit (e.g., building permit) and a contract for the work.

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.

CC provided the reasoning why the landlord originally purchased the property and that due to the COVID – 19 pandemic their plans were delayed much longer than originally anticipated. CC provided the logistical and practical benefits of the landlords' grandson going to a school near the subject home and ability to help his own son and daughter in-law in raising his grandson.

Based on the above, and on a balance of probabilities, I am satisfied that the landlord has issued the notice in good faith. I find that the notice to end tenancy complies with section 52 of the *Act* in form and content. As a result, the landlord is entitled to an order of possession pursuant to Section 55 of the *Act*.

The Notice is of full effect and force. The tenancy is terminated. The landlord is entitled to retain \$100.00 from the security deposit that they hold for this tenancy for the full recovery of the filing fee for this application.

Conclusion

The tenancy is terminated. The landlord is granted an order of possession.

The tenant's application is dismissed in its entirety without leave to reapply.

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: October 17, 2022

Residential Tenancy Branch