



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, LAT, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant(s) filed under the Residential Tenancy Act (the “Act”), to cancel Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Notice”) issued on May 23, 2022.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenant’s request to set aside the Notice and the tenant’s application to recover the filing fee at these proceedings. The balance of the tenant’s application is dismissed, with leave to re-apply.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlords have the burden of proving sufficient evidence to terminate the tenancy for the reasons given on the Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Should the Notice be cancelled?

Background and Evidence

The tenancy began on June 1, 2019. Rent in the amount of \$1,116.00 was payable on the first of each month. The tenants paid a security deposit of \$550.00 and a pet damage deposit of \$550.00.

The parties agreed that the Notice was served on the tenants indicating that the tenants are required to vacate the rental unit on August 1, 2022.

The reason stated in the Notice was that:

- The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse)

The landlords testified that the premises is a very small home built in 1947, and within the home is the rental unit. The landlords stated that they have always planned to use the entire home for their own use. The landlords stated that they are finally mortgage free and have now retired and they no longer want to be in the business of renting.

The landlords testified that they want the rental unit back to use as an extension of their family home for a gym, a theatre room, for their photograph and for extra storage as they have belongings everywhere. The landlords testified that they do not want someone else living in their home anymore and they just want to enjoy their retirement.

The tenants testified that they do not disagree that the landlord's wanting to expand their home. However, two weeks before the Notice was issued there was an altercation with the landlord, and they were assaulted by the landlord as the landlord place their hand on their shoulder, and the police were called.

Filed in evidence is a police report, shows the tenants were in a domestic dispute and the landlord wanted them to quiet down.

The tenants testified that during their tenancy the landlords have never said anything about wanting to take back their rental unit.

The landlords argued that on May 2, 2022, the male tenant was yelling and screaming at the female tenant and causing a unreasonable disturbance to the entire house. The landlords stated that they went to the rental unit. The landlord stated that they did not assault the male tenant as he keep alleging. The landlords stated that the male tenant is larger, heavier and much younger and they put their hand against the tenant's shoulder to keep the male tenant from their personal space.

The landlords stated that this incident only helped them make a final decision, that they no longer want to be the business of renting and no longer want someone living in their small home. The landlords stated they do not need the money and just want to be use the space for their own purpose.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

How to end a tenancy is defined in Part 4 of the Act. Section 49(1) of the Act a landlord may end a tenancy by giving notice to end the tenancy.

I have considered all of the written and oral submissions submitted at this hearing, I find that the landlords have provided sufficient evidence to show that:

- The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse)

In this case, I accept the evidence of the landlords that they no longer want to be in the business of renting and want the rental unit back for their own use. The evidence of the landlords was the premises is a small home and within the home is the rental unit. The evidence of the landlords was that they have recently paid off their mortgage and have retired and want to use the premises for their own activities. I find that is reasonable.

While I accept there was an incident on May 2, 2022; however, that was due to the tenants' own actions of domestic fighting causing an unreasonable disturbance. The landlords at all times have the right to address those issues at the time they were occurring. I cannot find this means the landlords have an ulterior motive simply because their exercising their rights and duties as a landlord. Further, if this was the sole reason for ending the tenancy the landlords were entitled to end the tenancy based on a One Month Notice to End Tenancy for Cause for an unreasonable disturbance.

There is no evidence that leads me to believe the landlords have an ulterior motive, such as to obtain a higher rent.

I find it more likely than not that this incident simply confirmed the landlords' position that they no longer wanted to be in the business of renting and having people live within their home. I am satisfied based on the evidence that the landlords truly intend to use the rental unit as an extension of their own home and for their own purpose.

Therefore, I dismiss the tenants' application to cancel the Notice. I find the tenancy legally ended on the effective date of the Notice, August 1, 2022. I find the tenants are overholding the rental unit.

As the landlords have accepted rent for the month of October 2022, I find it appropriate to extend the effective vacancy date to October 31, 2022, on an occupancy basis. Therefore, I find the landlords are entitled to an order of possession effective on the above extended vacancy date.

Since I have dismissed the tenants' application, I find that the landlords are entitled to an order of possession effective **October 31, 2022, at 1:00 P.M.** This order must be served on the tenants and may be filed in the Supreme Court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

Since the tenants were not successful with their application, I find the tenants are not entitled to recover the filing fee from the landlords.

Conclusion

The tenant's' application to cancel the Notice, is dismissed. The landlords are granted an order of possession.

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 18, 2022

Residential Tenancy Branch