



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 section 67 of 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; and
- authorization to recover the filing fee for this application from the respondents, pursuant to section 72.

The landlords attended the hearing with their representative, articling student JB. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing by the attending parties. Both parties confirmed that they understood.

The landlords confirmed receipt of the tenants' application. In accordance with section 89 of the *Act*, I find the landlords duly served with the tenants' application. As all parties confirmed receipt of each other's evidentiary materials, I find that these were duly served in accordance with section 88 of the *Act*.

As the tenants confirmed receipt of the 2 Month Notice dated April 29, 2022, I find the tenants duly served with the 1 Month Notice in accordance with section 88 of the *Act*.

Issues(s) to be Decided

Should the landlords' 2 Month Notice be cancelled? If not, are the landlords entitled to an Order of Possession?

Are the tenants entitled to recover the filing fee for this application from the landlords?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

The two parties entered into a verbal agreement for the tenants to rent the lower suite commencing March 1, 2021 after the tenants replied to an online advertisement that the rental unit was available for \$1,800.00 per month. Although the original agreement was for monthly rent of \$1,800.00 per month, the tenants now pay \$2,200.00 per month, which includes parking, and an additional \$200.00 as of June 1, 2022, which the tenants testified was demanded from them by JD for an additional occupant. The landlords argued that the tenants agreed to pay the additional rent for parking and the additional occupant. A security and pet damage deposit of \$900.00 per deposit was collected by JD. JD resides in the upper suite of the home, while LD was renting elsewhere with LD's friend KS. The landlords are separated, and share custody of their three children.

The tenants filed this application on May 13, 2022 after LD served the tenants with a 2 Month Notice for Landlord's Use on April 29, 2022. The tenants do not believe that LD had served this 2 Month Notice in good faith due to the numerous disputes between them and the landlords about the lack of heat in the rental unit, and disagreements over the material terms of the tenancy agreement.

The tenants testified that they did not have heat in the rental unit from January 11, 2022 to March 17, 2022, despite informing JD several times of this. The tenants testified that JD was upset after entering the rental unit on March 17, 2022, when JD discovered that the tenants were heating the rental unit with a space heater. The tenants testified that JD was concerned about heating costs, and requested additional rent from the tenants to cover utilities despite the fact that heat was included. The tenants testified that after confronting JD about the lack of heat in the rental unit, JD retaliated by attempting to withdraw material terms of the rental agreement such as the tenants' right to have additional dogs on the property. The tenants note that LD had sent them a text message on April 29, 2022 at 4:44pm stating "just a reminder that there's no extra dogs allowed on the property. Just your own.". The tenants testified that LD served them with the 2 Month Notice at 7:20 pm., only a few hours later after sending this text message. The tenants note that LD had only provided her landlord with official notice that LD was ending her tenancy on April 29, 2022, although it was unclear whether this email was sent at 5:38 p.m. or 5:38 a.m. The tenants called RC, an agent for LD's former landlord,

as a witness in the hearing. RC testified that the records show that an email was sent by LD on April 29, 2022 at 5:38 p.m. to end the tenancy. The tenants note that the email in the landlords' evidence shows an email was sent at 5:38 a.m. on April 29, 2022 to end the tenancy on July 1, 2022.

LD testified that she had served the tenants with the 2 Month Notice on April 29, 2022 after her friend KS informed her that he did not plan to continue with the tenancy after the end of the fixed term on June 30, 2022. LS stated in their written statement that her friend KS informed her in or around March 2022 of their plans to not continue with the tenancy. During the hearing, LS testified that KS had informed her sometime in February 2022 that KS was considering buying a place, and might not continue with the tenancy. KS testified that she did not want to share the rental unit with a stranger for her children's safety, but could not afford the rent on her own, which was \$2,895.00 per month.

KS decided it would make sense to move into the basement suite for many reasons. KS testified that she still worked on the property where the home was located, which is a honeybee farm with a store. KS and DS have been attending counselling sessions since March 2022 in order to work on their communication as friends and business partners, and their counsellor supported this move. Living in the lower suite would also allow the landlords to co-parent their children from one home. KS testified that there was other accommodation on the farm, but that was rented out to employees. LS testified that they did attempt to reside in the suite above the store for eleven months in 2020, but the space was not sufficient for LS and the two children. The landlords provided a copy of the letter from their counsellor, as well as a letter from KS.

The landlords do not dispute that there were disputes about the heating and number of dogs, but argued that the disputes were between JD and the tenants, and did not involve LD at all. LD testified that she had been separated from JD for over 2 years, and that they were not "one voice". LD confirmed that she did send a text message to the tenants reminding them that there were to be no extra dogs on the property, but argued that she was simply relaying this message on behalf of JD, who was out of the country, and had lost his cell phone.

The landlords argued that there were no major issues between the tenants until the 2 Month Notice was served. The landlord testified that the tenants had agreed to pay the additional rent for the additional occupant with no issues, and that the heating issues in the rental unit were caused by the tenants. The landlords testified that the heating system was working properly because the space heaters caused the ambient

temperature to be too high. The landlords note in their evidence package that on or about December 31, 2021 they had received a hydro bill in the amount of \$1,719.44, which was a 35% increase compared to the same period the year prior.

Analysis

Subsection 49(3) of the *Act* sets out that a landlord 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.

Residential Tenancy Policy Guideline 2: Good Faith Requirement When Ending a Tenancy states:

“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 that they do not have an ulterior motive for ending the tenancy.”

As the tenants had raised doubt as to the true intent of the landlords in issuing the 2 Month Notice, the burden shifts to the landlords to establish that they do not have any other purpose to ending this tenancy.

Although the landlords stated that the catalyst for the issuance of the 2 Month Notice is because of KS's decision to move out, leaving LS without a roommate, I find that the tenants had raised doubt as to the true intent of the landlords in issuing this notice.

It is undisputed by there was a disagreement between the parties about whether the heating system was working in the rental unit. It is also undisputed that LD had sent a text message to the tenants on April 29, 2022 about additional dogs on the property a few hours before serving the tenants with the 2 Month Notice.

I have considered the evidence and testimony before me, and although I do not doubt that LD had in fact given notice to her landlord to end the tenancy sometime on April 29, 2022 as the evidence shows, I am not convinced that there was no other motive in wanting to end this tenancy.

The landlords' own evidence raises questions about the credibility of the landlords' statements in this hearing. LD argued that the disputes that have taken place in the tenancy were strictly between JD and the tenants, and did not involve LD as the landlords were separated, and that the landlords were not of "one voice". I do not find LD's statement to be credible considering the fact that LD had sent the tenants a text message on April 29, 2022 about the tenants' dogs, specifically "reminding" the tenants that there were no extra dogs allowed, and that JD had spoken to the tenants about this before. While the text message does confirm that JD was away, and LD was acting on JD's behalf, I find that text message supports that LD and JD were in fact "one voice", and LD was apprised of the issues in the tenancy. I do not find that this text message was related to an emergency or an urgent issue which necessitated a message from LD to the tenants, which supports the fact that LD was more involved in her role as a landlord than LD claims.

It is also clear that LD had served the tenants with the 2 Month Notice hours after the LD had texted the tenants about the dogs. Furthermore, I find that although KS confirms in their own statement that they would not be continuing with the tenancy after June 30, 2022, neither KS nor the landlords produced sufficient evidence confirming when KS had confirmed with LD that they were in fact moving out. While KS' own statement states that they had given verbal notice on April 27, 2022, LD testified in the hearing that KS had first informed her sometime in February 2022 that they were considering purchasing their own place. The landlords provided March 2022 as the month in their written evidence when KS had informed LD that they were possibly moving out. I further note that although KS provided a statement confirming that they had given notice to LD that they would be moving out, neither LD nor KS provided further documentation or evidence to support when KS had actually given notice to LD that they would be moving out, and why. For example, there was reference to KS's decision to purchase their own place, but no documentation was provided confirming that this was the case. In the absence of this evidence, one would have to rely on the testimony and statements alone, which is prone to bias, or perception of bias, as KS and LD are friends.

As noted above, landlords have the burden to show that they do not have any other purpose in ending this tenancy. I find that the landlords have not met this burden of proof. I am not satisfied that the landlords had served the tenants with the 2 Month

Notice in good faith, and that there is no ulterior motive for ending this tenancy. I therefore allow the tenants' application to cancel the 2 Month Notice. The 2 Month Notice dated April 29, 2022 is hereby cancelled, and is of no force or effect. The tenancy will continue until ended in accordance with the *Act*.

I allow the tenants to recover the filing fee for this application.

Conclusion

The tenants' application to cancel the landlords' 2 Month Notice is allowed. The landlords' 2 Month Notice, dated April 29, 2022, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

I allow the tenants to implement a monetary award of \$100.00 for recovery of the filing fee by reducing a future monthly rent payment by that amount. In the event that this is not a feasible way to implement this award, the tenants are provided with a Monetary Order in the amount of \$100.00, and the landlord(s) must be served with **this Order** as soon as possible. Should the landlord(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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 13, 2022

Residential Tenancy Branch