



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF

Introduction

This hearing convened to deal with the tenants' application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The tenants applied for an order cancelling the Two Month Notice to End Tenancy for Landlord's Use of Property (Notice/2 Month Notice) issued by the landlord and to recover the cost of the filing fee.

The tenants, the landlord and a friend assisting the landlord attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. All parties were affirmed.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me. The landlord confirmed receipt of the tenants' application and evidence. The landlord confirmed not providing any documentary evidence.

I have reviewed all oral, written, and other evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced in this Decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

1. Should the 2 Month Notice issued by the landlord be upheld or cancelled?

2. Are the tenants entitled to recover the cost of the filing fee?

Background and Evidence

The tenancy began on December 15, 2011 and the monthly rent is currently \$1,700, up from the original monthly rent of \$1,500. The rental unit is a 1-bedroom unit in a condo building.

The tenants filed a copy of a written tenancy agreement, in which the parties agreed the monthly rent would increase to \$1,700, and that the tenancy was from July 1, 2021, for a fixed-term through June 30, 2022. The landlord marked the box that required the tenant to vacate the rental unit at the end of the fixed-term, but no reason was listed.

The 2 Month Notice filed in evidence was dated August 22, 2022, for an effective move-out date of October 31, 2022. In their application, the tenants confirmed receiving the 2 Month Notice on August 23, 2022, when it was posted to their door.

The Notice listed as reason for ending the tenancy is that the rental unit will be occupied by the landlord or the landlord's spouse **and** by the father or mother of the landlord or landlord's spouse.

The tenants' application was filed within the 15 days after service allowed by the Act to dispute the Notice.

Pursuant to section 7.18 of the Rules, the landlord proceeded first in the hearing to give evidence to support the Notice.

The landlord stated that her parents are coming in December and want to live in the rental unit because they are not comfortable living with her husband in their 4-bedroom home.

The landlord said that her parents are uneasy in Taiwan where they live due to the current situation with China.

The landlord said that her parents plan on staying at least 6 months or longer. The landlord said that her parents have a one-way ticket to Vancouver.

When asked to explain how both she and/or her spouse and her mother and/or father would all occupy the 1-bedroom rental unit, the landlord said it was her mistake to mark 2 boxes, as it was to only be her parents.

The landlord confirmed that the evidence from the tenants showing emails between the parties were accurate. The landlord did not dispute any of the tenants' evidence when specifically asked.

Tenants' response –

In their application, the tenants wrote:

We believe the landlord is not planning to occupy the unit as indicated on the Two Month Notice. The landlord has shown a pattern of bluffing and escalation that leads to the conclusion that they are simply attempting to remove the current tenants in order to increase rental income from the unit. It is clear that the landlord is not acting in good faith.

[Reproduced as written]

The tenants' documentary evidence included emails between the parties, some of which have been reproduced in relevant part as follows:

Wed, 30 Mar, 23:06

Hi (Tenant name),

Hope you are doing well!

The lease agreement will be due at the end of June.

Due to the tax and maintenance have incredibly increased.

The rate for 2022-2023 rent will be \$1800

Please let me know if you guys would like to stay.

Thanks,

(Landlord name)

Fri, 1 Apr, 13:47

Hi (Landlord name),

My understanding is that the maximum allowable rent increase this year is 1.5%. This would bring our rent to 1725.50. Please let me know what you think.

Thanks,
(Tenant name)

Sat, 2 Apr, 00:52

Hi (tenant name),

Yes, I understood that it's 1.5% maximum allowable rent increase this year. Our lease agreement is fixed for 1 year.

"At the end of this time, the tenancy is ended and the tenant must vacate the rental unit"

It considers a new lease agreement.

According to the rental around the area, it's about \$2500-2800/ mo for 800sqft. (it may not include in-suite laundry) You can do a bit of research about the current rental near the place.

Also, there is a new law regarding the residential additional rent increase. It means the tenants will pay the additional increased fee for tax and maintenance besides the 1.5%.

Basically, I absorbed all the escalation fees. The building was doing renovation last year, and the maintenance climbs up every year, it's about \$500/mo.

I only adjust a bit to cover the cost as you have lived here for many years otherwise the rental should not be only \$1800. I hope you can understand.

Thanks,

(Landlord name)

8 Apr 2022, 14:25

Hi (Tenant Name),

Thanks for the reply.

The rental is very low compared with rentals in the area even after it's increased.

The tax, the maintenance, and also the expense for the damage of the unit cost too much.

I am so sorry that I will take the unit back for my personal use.

The tenancy agreement will be ended at the end of June 2022.

Thanks,

(Landlord name)

10 Apr 2022, 10:47

Hi (Landlord name),

Thanks for your reply. Two points:

- If you intend to take possession of the unit for your "personal use" (Landlord's Use of Property) this means that you or a **close family member** (i.e. Father, mother, or child) will **move into the unit** and make it a primary residence. Your declaration of this intention must be made **in good faith**. Please clarify.
- You refer to the "expense for the damage of the unit". Do you mean damage or maintenance? If you mean damage, **please specify the damage you are referring to**. I believe we have improved, rather than damaged, the unit during our tenancy.

We are willing to adjust to \$1750/month. This is in excess of the maximum allowable increase (to \$1725.50) so I am sure you will find it fair.

Thanks,

(Tenant name)

11 Apr 2022, 02:12

Hi (Tenant name),

My family will use the unit for a few months since my house had a leak and will be repaired and renovated.

My original plan is to continue the lease agreement, and I'll rent a place somewhere else.

However, now instead of renting a space for myself, I will move to the apartment during the renovation.

Regards,

(Landlord name)

12 Apr 2022, 03:05

Hi (Tenant name),

Please check the tenancy agreement that

“At the end of this time, the tenancy is ended and the tenant must vacate the rental unit”.

I’m trying to be nice to tell you the situation, but you seem to be questioning me.

I actually do not have to explain that much.

I am going to move into the place, and I don’t know how long.

It depends on the renovation. It might be more than half a year, might be a few months.

For the damage part, please do not forget all the appliances which I purchased because of your damage. New kitchen faucet, refrigerator, stove, washing machine. Especially the stove, it’s actually still functioning normally, but it’s because your mistaken to turn off the power, I have to hire people to cut the counter and replace a new one. I did not ask any penny from you. Furthermore, over years, the rent is not following the trend to increase.

I really hope you can be in my shoes, and I think you know you're taking a lot out of this.

Regards,

(Landlord name)

[All emails reproduced as written except for anonymizing personal information to protect privacy]

The tenant testified that the landlord is not acting in good faith and has an ulterior motive, which is to increase the monthly rent.

The tenant said that the reason given by the landlord at the hearing was the first time he had heard the landlord’s parents were moving into the rental unit.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Section 49 (3) of the Act states that 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.

When a tenant disputes a Two Month Notice to end tenancy, the landlord has the burden to prove that not only do they intend to use the rental unit for the stated purpose, but also that the Notice was given in good faith.

Residential Tenancy Policy Guideline 2 provides good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant, they do not have an ulterior motive for ending the tenancy, and they are not trying to avoid their obligations under the Act.

Upon review of the Two Month Notice to End Tenancy dated August 22, 2022, I find that the 2 Month Notice was on the approved form as required by section 52 of the Act and I find that it was served upon the tenants in a manner that complies with section 88 of the Act.

In this case, I am not satisfied that the landlord truly intends to use the premises for the stated purpose or that the landlord does not have an ulterior motive for ending the tenancy. I make these finding based on the following.

I find the landlord submitted insufficient evidence to show that her parents truly intended to move into the rental unit as a living accommodation for at least 6 months or longer after the effective date of the Notice. The parents were not present at the hearing to provide direct testimony, nor were there supporting documents, such as an affidavit, flight details/records or proof that the landlord's parents, who live in another country, have been granted legal authority to stay in Canada for an extended time of over 6 months or that they were even flying into the country in December as claimed.

The landlord's statement that her parents were uncomfortable living with her husband in in their 4-bedroom did not have the ring of truth, absent further proof.

I find the emails between the landlord and the tenant show that the landlord wanted to increase the monthly rent to align with the current market rent, which she assessed to be \$2,500-\$2,800, far in excess of the tenants' current monthly rent.

The landlord then wrote to the tenants the tax, maintenance and other expense cost too much and that she would take the rental unit for "personal use".

The landlord then wrote to the tenants she would "use the unit for a few months" as her house had a leak and would be repaired.

These emails lead me to conclude the landlord did not issue the 2 Month Notice in good faith and had an ulterior motive when doing so, which was to significantly increase the monthly rent over and above what the tenants are paying. The landlord had already increased the monthly rent through a written tenancy agreement over the allowed amount at a time when landlords were not permitted to increase the monthly rent due to Covid regulations.

Given the evidence before me and taken in totality, I find that the landlord submitted insufficient evidence to prove on a balance of probabilities that she, her spouse and her parents intended on living in the rental unit for residential purposes for 6 months following the effective date of October 31, 2022. I also find that the 2 Month Notice was not issued in good faith, but rather I find the landlord had an ulterior motive.

Therefore, I find the tenants' application is successful, and as result, I **ORDER** the 2 Month Notice of August 22, 2022, is cancelled and is of no force or effect.

I **ORDER** the tenancy to continue until it may legally end under the Act.

I grant the tenants recovery of their filing fee of \$100. I authorize the tenants a one-time rent reduction of \$100 from a future monthly rent payment in full satisfaction.

Cautions to the landlord –

From the evidence, I find it necessary to provide cautions and information to the landlord.

The most recent written tenancy agreement shows a tenancy start date of July 1, 2021, with a fixed-term of June 30, 2022. Although the landlord marked the box that the tenants were required to vacate, I find this clause does not comply with Residential Tenancy Regulation 13.1, and as a result, the term is not enforceable and the tenants were not required to vacate by June 30, 2022. The Regulation stipulates that the tenancy agreement is renewed on a month-to-month basis. For this reason, this tenancy is now on a month-to-month basis.

Under section 62(3), I order the landlord to comply with Part 3 of the Act and Regulation 6 when attempting to increase the tenants' monthly rent in the future.

I find the written tenancy agreement did not comply with the Act as to the standard terms, which included a requirement that the landlord provide their address for service as that part on page 1 was left empty. I order the landlord to send their address to the tenants within 5 days of receipt of this Decision, by letter or email.

I caution the landlord that further attempts to end the tenancy for unlawful reasons or in bad faith may constitute harassment which could support a monetary claim by the tenants for loss of quiet enjoyment.

Conclusion

The tenants' application has been granted as I have ordered the 2 Month Notice cancelled and is of no force or effect.

The tenancy will continue until ended in accordance with the Act.

The tenants are granted a 1-time rent reduction of \$100 to recover the cost of the filing fee.

The landlord has been issued cautions and provided information about requirements under the Act and Regulation.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: October 18, 2022

Residential Tenancy Branch