



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

The Tenants (hereinafter, the “Tenant”) filed an Application for Dispute Resolution (the “Application”) on May 17, 2022 seeking an order to cancel the Two Month Notice to End Tenancy for the Landlord’s Use of Property (the “Two-Month Notice”). Additionally, they seek reimbursement of the Application filing fee. The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on September 29, 2022.

Both parties attended the conference call hearing. At the outset, I reviewed disclosure of evidence that either side provided in advance. With verification that both parties received relevant disclosure from the other, I proceeded with the hearing.

Issues to be Decided

Is the Tenant entitled to a cancellation of the Two Month Notice?

Should the Tenant be unsuccessful in seeking to cancel the Two Month Notice, is the Landlord entitled to an order of possession pursuant to s. 55(1) of the *Act*?

Is the Tenant entitled to recover the filing fee for this application pursuant to s. 72 of the *Act*?

Background and Evidence

Neither party submitted a copy of the tenancy agreement they have in place; however, they both verified details in the hearing. The agreement began on August 15, 2017, for an initial one-year fixed term, then reverting to a month-to-month arrangement. The rent amount of \$833.50 did not increase over the term of the tenancy.

The Tenant resides in the separate basement rental unit at the property. The Landlord owns the entire rental unit property. In the hearing the Tenant clarified that the rental unit is a two-bedroom suite. There is an adjacent one-bedroom suite in the same basement.

The Landlord issued the Two-Month Notice to the Tenant on May 5, 2022. The Tenant confirmed they received this in their mailbox on that date. The copy in the Tenant's evidence shows the move-out end-of-tenancy date as June 30, 2022. The Landlord in the hearing clarified the correct end-of-tenancy date as July 31, 2022. The second page of the document shows the Landlord's indication that they will personally occupy the rental unit, crossed out, then also the indication that their parent will occupy the rental unit.

The Landlord explained that, although separated from their common-law partner, they continue to reside next door to the rental unit with their former common-law partner's family. This was ongoing as of January 2022, as told to the Tenant. Their indication to the Tenant was that they would be moving back into the rental unit themselves after the separation.

Additionally, the Landlord's family owned another home in a different part of the province, and they sold that home. This made the Landlord adjust their plan, with their parent moving into the rental unit. By May, the Landlord had not really decided which of these plans was most feasible, telling the Tenant that they (*i.e.*, the Landlord) would be taking the rental unit. With more planning in regard to their own business, this would leave the Landlord's business space as the upper part of the rental unit home, with their parent moving into the lower basement unit, currently that rental unit occupied by the Tenant.

More simply, the Landlord summarized their plan as having the upper part of the rental unit home for them and their children and business, with the rental unit downstairs occupied by their parent. Their sworn affidavit they provided in the evidence (June 22,

2022) sets out: “I have decided to move from my Current Residence to the Property in [the] two-bedroom suite [i.e., the rental unit] with my minor children while my parents and brother are occupying the upper portion of the property.”

On their Application, the Tenant set out their belief that the Landlord was not acting in good faith, and “[did] not have intentions to move into [the] basement suite” based on previous discussion of rent increases. They added the Landlord has another basement suite in the same rental unit property that was rented out to a different tenant as recently as April 2022, as well as another apartment elsewhere rent out in April-May.

In the hearing the Tenant pointed to the discrepancy with the suitability of a one-or-two-bedroom unit available. If the Landlord’s parents were to move, the other available rental unit would be available – so “why should [I] be the one who’s moving when they could ask the other tenant [i.e., the other one-bedroom rental unit].” In sum, the Tenant feels the Landlord has other options in place, despite this being a stressful situation for the Tenant after a relatively long-term tenancy in place here.

Analysis

The Act s. 49(3) provides that a landlord may end a tenancy by giving a Two-Month Notice “if a landlord or a close family member of the landlord intends in good faith to occupy the rental unit.”

Following this, s. 55 provides that I must grant to a landlord an order of possession if the Two-Month Notice complies with the s. 52 form and content requirements, and I dismiss the tenant’s Application or uphold the landlord’s notice.

In this matter, the landlord MM bears the onus to prove that the reason for ending the tenancy is valid and undertaken in good faith. In the *Residential Tenancy Policy Guideline* specific to this situation (i.e., 2A: Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member), “good faith” is described as requiring “an honest intention with no dishonest motive” and the onus is on the Landlord here to establish they are acting in good faith.

On my review of the testimony and evidence in this hearing, I find the Landlord has not offset the overcome the burden of proof to show their honest intention to occupy the rental unit. I make this finding because of the following:

- The Landlord indicated on the Two-Month Notice that it was their own move into the rental unit; however, this changed to “the father or mother. . .”.
- This is relevant to discrepancies in the Landlord’s own evidence, where they provided in their affidavit that it would be their own use of the rental unit (sworn on June 22, 2022), with their parents and brother occupying the upper portion of the property.” This was over one month *after* they issued the Two-Month Notice on May 5, 2022 for a different reason.
- In the hearing, the Landlord stated they, along with their business and their own children, would occupy the upper portion of the rental unit, with their parents moving in the basement rental unit. This conflicts with what they set out in their affidavit.
- The Landlord’s parents are away out of the country, and this calls into question the true end-of-tenancy date that the Landlord provided on the Two-Month Notice.
- In the hearing the Landlord stated they were open to continuing the tenancy for another 1 or 2 months. I find as fact this would be up to an additional two months *past the hearing date*. This calls into question the true need of the vacancy date indicated on the Two-Month Notice.

In sum, there are discrepancies both in terms of the Landlord’s design for who exactly would occupy the rental unit, and the date on which they need the tenancy to end. When it comes to “good faith”, the requirement is for an unwavering intention with firm plans in place. I find the variability in place in what the Landlord described sets up a high likelihood for the Landlord to change plans yet again, then acquiring new tenants in a new tenancy. This is what is in place where the Landlord has a few different options to utilize for living space; whereas the Tenant has no options, as they described in the hearing.

I find the Landlord has not met the burden to show they issued the Two-Month Notice in good faith. I am not satisfied that the Landlord’s need for the rental unit is legitimate. Again, this is based on discrepancies in their evidence from which I find their designs for the rental unit are subject to change. There is mutability present in the situation here.

The Two-Month Notice is thus cancelled, and the tenancy will continue.

As the Tenant was successful in this Application, I find they are entitled to recover the \$100 filing fee. I authorize the tenants to withhold the amount of \$100 from one future rent payment.

Conclusion

For the reasons above, I order that the Two-Month Notice issued by the Landlord on May 5, 2022 is cancelled. The tenancy remains in full force and effect.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: October 11, 2022

Residential Tenancy Branch