



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) 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.

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.

Issues to be Decided

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Background and Evidence

The landlord gave the following testimony. The tenancy began about 12 years ago. The landlord purchased the property in 2011 with the current tenant in place. The landlord testified that she lived overseas for about 15 years and returned to her childhood community in July 2020. The landlord testified that she advised the tenant at that time that she would be wanting to move into the home in the near future as she had returned to work in the local school district as a teacher and would not be travelling abroad any longer. The landlord testified that she didn't give a hard date as to when the tenant would need to leave as he was a long-term tenant and wanted to be flexible.

The landlord testified that she would check in periodically in the hopes that the tenant would be cleaning up the property and removing much of the machinery he had as he used a portion of the home as a woodworking shop. The landlord testified that after numerous check-ins and no progress, she issued the Two Month Notice to End the Tenancy for Landlords Use of Property on June 10, 2022 with an effective date of September 1, 2022 as noted on the notice, as she wants to move into her home for her own personal use. The landlord testified that she has been staying with her parents who live nearby but that will be coming to an end as they are in the process of selling their home. The landlord testified that she fully intends to move into the home and is aware of possible compensation to the tenant if she doesn't.

The tenant gave the following testimony. The tenant testified that he doesn't believe that the landlord will be moving in. The tenant testified that she had never mentioned her intention to move in until he got the notice. The tenant testified that it will be very difficult for him to find another home due to his financial situation.

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 principal aspects of the tenant's claim and my findings around each are set out below.

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.

The landlord gave clear concise and credible testimony. She provided details as to the logistical and financial benefits for her to move into the home in her childhood community as she has now returned from living overseas and continuing her profession as a teacher at a local educational institution. The tenant stated that he doesn’t believe that the landlord is going to move in but, when asked what he thought she was doing he stated, “I have no idea”. Based on the above, and on a balance of probabilities, I find that the landlord has issued the notice in good faith. I find that the notice complies with

section 52 of the Act in form and content, and therefore the landlord is entitled to an order of possession pursuant to section 55 of the Act.

The Notice remains in full effect and force. The tenancy is terminated.

Conclusion

The tenancy is terminated. The landlord is 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: November 08, 2022

Residential Tenancy Branch