



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

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

- cancellation of the landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") pursuant to section 49;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions.

No issues were raised with respect to the service of the application and evidence submissions on file.

Issues

Should the landlord's Two Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The rental unit is a two bedroom basement suite. The monthly rent is \$900.00 per month. The tenancy began 8 years ago.

A contract of purchase and sale for the property was entered into on July 12, 2022. On July 19, 2022 the buyer provided written notice to the seller requiring vacant possession as the buyer intended to occupy the unit.

The landlord served the tenant with the Two Month Notice on July 25, 2022. The Two Month Notice was issued on the grounds that the landlord entered into an agreement in good faith to sell the unit; all the conditions of the sale have been satisfied; and, the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit. The effective date of the Two Month Notice was September 30, 2022. Typically, such a Notice is issued by the seller who is still the legal landlord at the time but in this case the Notice was issued by the buyer.

The landlord testified that they were told by the seller and/or his real estate agent that the tenants were paying a rent of \$1600.00 per month. The landlord testified that although they originally wanted the property for their own use but the seller told them the tenants who had been long term tenants wanted to stay. The landlord testified that they did originally agree that the tenants could stay as they thought they were paying \$1600.00 per month but no written agreement was entered into. The landlord testified they were not able to negotiate a rent amount, so they went back to their original plan of wanting the property vacant for their own use. The tenants were then served a Two Month Notice. The landlord testified that he has his own tutoring business and needed the space for that. The landlord testified that there was a significant difference between the \$1600.00 rent they had been assured by the seller and the \$900.00 rent the tenants were actually paying. The landlord testified they would suffer significant losses at that rent amount as they spent a lot of money repairing the property.

The tenants submit they have been long term tenants and their daughter attends a school nearby. The tenants testified that they met the new owners (referring to the landlord's grandparents who are joint owners) when they purchased the property in July. The tenants submit that they were assured at the time by the landlord's grandparents that everything would stay the same. However, shortly after, they received a call from the buyers realtor stating they would need to pay \$1600.00 monthly rent if they wanted to stay. They did not agree so they were served a Two Month Notice. The tenants submitted text message correspondence with the buyers realtor in which they were told they could stay if they agreed to pay \$1600.00 per month.

In reply, the landlord submits that his grandparents are elderly and do not speak English. The landlord submits that any conversation with the grandparents was only verbal and that the sale had not been finalized at the time.

Analysis

Section 49 of the Act contains provisions by which a landlord may end a tenancy for landlord's use of property by giving notice to end tenancy.

Specifically, section 49(5) of the Act provides as follows:

A landlord may end a tenancy in respect of a rental unit if

- (a) the landlord enters into an agreement in good faith to sell the rental unit,*
- (b) all the conditions on which the sale depends have been satisfied, and*
- (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:*
 - (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;*
 - (ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.*

Pursuant to section 49(8) of the Act, a tenant may dispute a Two Month Notice by making an application for dispute resolution within fifteen days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the Two Month Notice.

Further, Two Month Notices have a good faith requirement. *Residential Tenancy Policy Guideline #2* "Good Faith Requirement when Ending a Tenancy" provides the following guidance:

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.

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.

I find that the testimony and evidence of the parties is sufficient evidence of an ulterior motive to end the tenancy on the part of the landlord. The evidence supports that the landlord does not truly intend to occupy the unit for their own use and would have been agreeable to continue the tenancy had the tenants agreed to a substantial rent increase. If the landlord was provided false information as to the rent paid by the tenants at the time of purchase this is no fault of the tenants. The landlord should take this up with his realtor or the sellers. In addition to the above, the landlord also failed to provide any supporting documents or evidence to corroborate his testimony regarding needing the space for his tutoring business.

I find the tenants provided sufficient evidence to call good faith intent of the landlord into question. I find the landlord has failed to establish that he does not have an ulterior motive for ending the tenancy and that he truly intends to use the rental unit for the purpose stated in the Notice.

Accordingly, the Two Month Notice dated July 25, 2022, is hereby cancelled and of no force or effect.

As the tenants were successful in this application, I find that the tenants are entitled to recover the \$100.00 filing fee paid for this application. The tenants may withhold this amount from a future rent payment.

Conclusion

I allow the tenants application to cancel the landlord's Two Month Notice, dated July 25, 2022, which is hereby cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

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 22, 2022

Residential Tenancy Branch