



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, RP, FFT

Introduction

The Tenant filed an Application for Dispute Resolution (the “Application”) on July 6, 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 repairs in the rental unit, and 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 November 25, 2022.

Both parties attended the conference call hearing. At the outset, I reviewed documents the Tenant submitted as evidence, consisting of the tenancy agreement and the Two-Month Notice. The Landlord confirmed they received the Notice of Dispute Resolution Proceeding. I confirmed that the Landlord was aware of the basic documents concerning the tenancy that the Tenant had submitted. On this basis, I proceeded with the hearing as scheduled.

Preliminary Matter – unrelated claim for repairs

The *Residential Tenancy Branch Rules of Procedure* permit an arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. Rule 2.3 describes ‘related issues’, and Rule 6.2 provides that an arbitrator may refuse to consider unrelated issues. It states: “. . . if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hearing other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.”

As I stated to the parties in the hearing, the matter of urgency here is the possible end of this tenancy. I find the most important issue to determine is whether or not the tenancy is ending, based on the Two-Month Notice issued by the Landlord.

I dismiss the Tenant's request for repairs in the rental unit, with leave to re-apply.

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

The Tenant submitted a copy of the tenancy agreement, and I confirmed the basic terms therein with the Landlord in the hearing. This shows the start of the tenancy on March 1, 2018 with the rent amount at \$1,300. The parties agreed that the rent did not increase over the course of this tenancy. As of the date of the hearing, the Tenant maintains occupancy in the rental unit.

The Landlord issued the Two-Month Notice to the Tenants on June 28, 2022. The Tenant confirmed they received the document at the doorstep of the rental unit. This provided the move-out end-of-tenancy date as September 1, 2022. The second page of the document shows the Landlord's indication that "The landlord or the landlord's spouse" will occupy the rental unit.

In the hearing, the Landlord set out their reason for issuing the Two-Month Notice. This was to be their primary residence for quite some time, as planned once they were able to return to the country from elsewhere.

The Tenant described how they received the Two-Month Notice from a property manager who apologized for issuing it, stating that they were also issuing 7 or 8 other notices at other properties belonging to the Landlord. The Tenant submitted these were

all properties located in the area and asked the basic question as stated in this Application: why would the Landlord need to specifically occupy this rental unit when there are a number of other properties available to them?

The Landlord's immediate answer to this query was that other tenancies' endings were for different reasons, such as unpaid rent.

The Tenant described how the week prior to the hearing they were in contact with a real estate agent who was working on selling the property. The Tenant saw the sale listing online, and there was a sign placed on the front of the property showing that it was for sale. At one point earlier the Landlord contacted the Tenant to advise that an insurance company was arriving to assess; however, this really was the real estate agent who arrived to take pictures of the rental unit and property.

On November 7, the Tenant received an email from the Landlord who required a potential buyer's viewing.

In the hearing, the Landlord stated that they were selling the rental unit. They have put the property on the market to see if it will sell, thereby assessing its true value.

Analysis

The Act s. 49(3) provides that a landlord may end a tenancy by giving a Two-Month Notice "if a landlord or 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 a tenant's application or uphold a landlord's notice.

In this matter, the Landlord bears the onus to prove the reason for ending the tenancy is valid and undertaken in good faith.

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.

At this stage, the Landlord has undertaken firm plans to sell the rental unit. A realtor is in close contact with the Tenant to arrange for material designed for the sale, such as photos, and showings to potential buyers. This occurred within the timespan from the Tenant's Application for this hearing, and the actual hearing date; however, these recent

events are impactful on the issues, and definitely highlight the Landlord's designs on the rental unit going forward. I find it more likely than not that the Landlord will not occupy the rental unit as they set out in the Two-Month Notice.

I conclude the Landlord is focused on a sale. If the Landlord at one time had some idea about their own use of the rental unit, more recent events have cancelled that, thus invalidating the Two-Month Notice. I find it more likely than not that the idea of a sale is now paramount for the Landlord.

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

As the tenants were 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 Landlords on June 28, 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: November 25, 2022

Residential Tenancy Branch