



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a residential tenancy dispute. On July 11, 2022, the tenants applied for an order to cancel a Two Month Notice for Landlord's Use, dated June 23, 2022 (the Two Month Notice);

The hearing was attended by the tenants, the landlord, the landlord's daughter, and landlord's counsel. Those present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were also made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

Neither party raised an issue regarding service of the hearing materials.

Issues to be Decided

- 1) Are the tenants entitled to an order to cancel the Two Month Notice?
- 2) If not, is the landlord entitled to an order of possession?

Background and Evidence

The parties agreed on the following particulars of the tenancy. It began on November 1, 2015; rent is \$1,300.00, due on the first of the month; and the tenants paid a security deposit of \$650.00 which the landlord still holds.

A copy of the Two Month Notice was submitted as evidence. The Notice is signed and dated by the landlord, gives the address of the rental unit, states the effective date, states the reason for ending the tenancy, and is in the approved form. The Two Month

Notice indicates the tenancy is ending because the rental unit will be occupied by the child of the landlord or the landlord's spouse.

The landlord testified they served the Two Month Notice on the tenants by registered mail on June 23, 2022. The tenant agreed the Notice was sent on June 23, and testified that they picked it up from the post office on an unknown date.

Landlord's counsel presented written submissions from the landlord and her daughter, each stating that their intention was for the tenants' adult daughter, who currently lives in the upper unit of the home with her parents, to move into the rental unit, which is in the basement of the home.

Counsel submitted that an arbitrator in a June 2021 hearing granted the tenants' request to cancel a previous Two Month Notice. Counsel submitted that since that hearing, the health of the landlord has deteriorated, and that the motivation for serving the current Two Month Notice is to allow the landlord's daughter to continue providing care to her aging and ailing parents, while giving her more space and privacy, which will make the arrangement sustainable.

Counsel submitted that the landlord and her spouse are both over 70 years of age. Submitted as evidence is a note from the landlord's doctor, stating that she has been diagnosed with colitis. Also submitted is a document regarding a medical procedure undergone by the landlord's spouse, who suffers from complications related to diabetes, as noted in a written submission.

The tenant testified that the landlord is not acting in good faith, referencing the landlord's earlier attempt to evict the tenants by issuing the previous Two Month Notice immediately after the tenants refused to pay an illegal rent increase. The tenant testified the landlord is not sincere, as she stated in 2021 that she does not require the income from the rental unit, yet sought to impose an illegal rent increase on the tenants.

The tenant testified that the landlord has failed to make repairs requested by the tenants, including repairs to a door, a tap, and the stove, which the tenant stated does not work properly and sometimes produces sparks. The tenants did not submit photos demonstrating that repairs are required, or submit a copy of a written repair request in support of their claim.

The landlord's written submission states that she has responded to all of the tenants' repair requests, and did not refuse to make repairs. The landlord submits she was not

previously aware that the stove sparks and submits that the tenants did not provide her with a reasonable opportunity to inspect the stove. The landlord submitted that as the tenants did not follow up with her after her initial attempts to rectify their reported repair issues, she understood that the issues had resolved.

Analysis

I find the landlord served the Two Month Notice on the tenants on June 23, 2022, and in accordance with section 88 of the Act. I deem the Notice received by the tenants on June 28, 2022 in accordance with section 90. As the tenants applied to dispute the Notice on July 11, 2022, I find they met the deadline required by section 49(8).

I find the Two Month Notice meets the form and content requirements of section 52 of the Act.

As described in Residential Tenancy Branch Rule of Procedure 6.6, when a tenant applies to dispute a notice to end tenancy, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice is based. And, as noted in Residential Tenancy Policy Guideline 2A: *Ending a Tenancy for Occupancy by Landlord, Purchaser, or Close Family Member*, when the issue of a dishonest motive or purpose for ending the tenancy is raised by a tenant, the onus is on the landlord to establish they are acting in good faith.

The tenants have provided insufficient evidence in support of their position that repairs were required, requested, and refused. The tenants have not provided photos or proof of repairs requested in writing.

The landlord submitted they did not refuse to make repairs, and that as the tenants did not follow up after the landlord attempted to address repair issues, the landlord understood they had been resolved.

I find credible the landlord's submission that her health has declined since service of the previous Two Month Notice, and that as a result she and her spouse benefit from the assistance provided by her daughter. The landlord has provided evidence in support of her claim that she has been diagnosed with a health issue, and that her spouse also has health complications. I accept the submission of the tenant's daughter that moving into the rental unit will allow her to continue to provide care to her aging and ailing parents in a sustainable way, as it will give her additional space and privacy.

Considering the evidence before me, I find, on a balance of probabilities, that the landlord has proven the grounds for the notice and that she is acting in good faith.

The Two Month Notice is upheld. The landlord is entitled to an order of possession in accordance with section 55 of the Act.

Conclusion

The tenants' application is dismissed.

The Two Month Notice is upheld.

The landlord is granted an order of possession, which will be effective December 31, 2022, at 1:00 p.m.

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: December 19, 2022

Residential Tenancy Branch