



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDCT, RR, PSF, LRE, OLC, OT, FFT

Introduction

On September 6, 2022, the Tenants submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) to cancel a Two Month Notice to End Tenancy for the Landlord’s Use of the Property (the “Notice”) dated August 31, 2022, for a monetary order for compensation for monetary loss or other money owed, for an order to reduce rent for repairs, services or facilities agreed upon but not provided, for an order that the landlord to provide services or facilities required by the tenancy agreement or law, for an order to suspend or set conditions on the landlord's right to enter the rental unit or site, for an order for the Landlord to comply with the *Act*, and for the recovery of their filing fee for this application. The matter was set for a conference call.

The Landlord as well as both the Tenants attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenants were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure requires the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters - Related Issues

I have reviewed the Tenants' application, and I note that they have applied to cancel a Notice to end tenancy as well as several other issues. I find that these other issues are not related to the Tenant's request to cancel the Notice. As the other matters do not relate directly to a possible end of the tenancy, I apply section 2.3 of the Residential Tenancy Branches Rules of Procedure, which states:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Therefore, I am dismissing with leave to reapply, the Tenants' claims for a monetary order for compensation for monetary loss or other money owed, for an order to reduce rent for repairs, services or facilities agreed upon but not provided, for an order that the landlord to provide services or facilities required by the tenancy agreement or law, for an order to suspend or set conditions on the landlord's right to enter the rental unit or site, and for an order for the Landlord to comply with the *Act*.

I will proceed with this hearing on the Tenants' claim to cancel a Two-Month Notice and recover the filing fee for this application.

Issues to be Decided

- Should the Notice dated August 31, 2022, be cancelled?
- If not, are the Landlords entitled to an order of possession?
- Are the Tenants entitled to the return of their filing fee?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The Tenants testified that the tenancy began in May 2009 under a signed tenancy agreement with the previous owners of the rental property.

The parties agreed that the current rent for this rental unit is \$918.00 per month, to be paid by the first day of each month.

The Tenants testified that they paid the previous owner a \$325.00 security deposit when their tenancy began.

The Landlord testified that they took over ownership of the rental unit in November 2015, and that they purchased the property under a bankruptcy sale but that they did not get a copy of the Tenants' tenancy agreement or receive the security deposit for this tenancy from the previous owner.

The Landlord and Tenants were advised in these proceedings that the new owner, the Landlord in these proceedings, inherited this tenancy as is, from the previous owner, including the details of the security deposit. The Landlord was encouraged to seek legal advice on their options to recover the paid security deposit for this tenancy from the previous owners.

The parties agreed that the Notice was served on August 31, 2022, by posting it to the front door of the rental unit. The Notice indicated that the Tenants were required to vacate the rental unit as of October 31, 2022. The Tenants submitted a copy of the August 31, 2022, Notice into documentary evidence. The reason checked off by the Landlord within the Notice was as follows:

- The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

Please indicate which close family member will occupy the unit.

- The landlord or the landlord's spouse

The Landlord testified that they will be reclaiming the rental unit for their personal use as they are moving back to the area.

The Tenants testified the Landlord owns two units on the rental property; unit #3 that they live in and unit #4, that is vacant. The Tenants testified that the Landlord should not be ended their tenancy, as the Landlord can move into unit #4.

The Landlord agreed that they own two units on the rental property, units #3 and #4, but testified that unit #4 is rented. The Landlord was asked to provide details of the tenancy

for unit #4. The Landlord testified that they rented that unit to their niece, who had moved into the unit in December 2022. The Landlord confirmed that they did not create a written tenancy agreement for unit #4.

The witness T.T. was affirmed to be truthful in their testimony and testified that they are renting unit #4 from the Landlord, their uncle. When asked by this Arbitrator “what is your address?”, the witness paused, papers could be heard shuffling in the background, then the witness stumbled in a response and then stated number four. The witness T.T. was asked, “What is your full street address”? the witness paused again, and eventually testified “#4-6”. The witness T.T. was asked “What is your street name”? the witness paused again, and eventually testified “Cactus”. The Witness T.T. was then asked when did you move in? The witness paused again, stumbling in a response and eventually testifying “In December.”

The witness T.T. was then asked if they could provide a utility bill or any mail addressed to them at unit #4 to these proceedings. The Witness T.T. testified “no”, then clarified that they had not yet put the utilities in their name, nor had they received mail at this address.

The Landlord was asked if unit number #4 was occupied when the Notice to end tenancy was issued to the Tenants. The Landlord testified that unit #4 had been rented at that time but that they did not have evidence of that tenancy to present to these proceedings, as the tenancy did not have a written tenancy agreement, and they did not issue rent receipts.

The Tenants testified that they live right next to unit #4 and have not seen anyone coming or going from that unit or any cars parked in that unit’s parking spot, except the Landlord’s.

Analysis

I have carefully reviewed the testimony and evidence, and on a balance of probabilities, I find as follows:

I find that these parties are in a month-to-month tenancy, that rent in the amount of \$919.00 is to be paid by the first day of each month and that the Tenants paid a \$325.00 security deposit for this tenancy.

I accept the documentary evidence provided by the Tenants supported by the testimony of the Landlord, that the Landlord served the Notice to end tenancy to the Tenants by posting the Notice to the front door of the rental unit on August 31, 2022. I find that the Tenants received the Notice on September 3, 2022, three days after it had been posted to the front door of the rental unit, pursuant to the deeming provision set out in section 90 of the *Act*.

Section 49 of the *Act* states that upon receipt of a notice to end a tenancy, a tenant who wishes to dispute the notice must do so by filing an application for dispute resolution within 15 days of receiving the Notice. Accordingly, the Tenants had until September 18, 2022, to dispute the Notice. In this case, The Tenants filed to dispute the Notice on September 12, 2021, within the required timeline.

The Tenants' application called into question whether the Landlord had issued the Notice in good faith. The Residential Tenancy Policy Guideline 2 address the "good faith requirement" as follows:

Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant, they do not have an ulterior purpose for ending the tenancy, and they are not trying to avoid obligations under the RTA or the tenancy agreement. This includes an obligation to maintain the rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law and makes it suitable for occupation by a tenant (section 32(1)).

If a landlord gives a notice to end tenancy to occupy the rental unit, but their intention is to re-rent the unit for higher rent without living there for a duration of at least 6 months, the landlord would not be acting in good faith.

If evidence shows the landlord has ended tenancies in the past to occupy a rental unit without occupying it for at least 6 months, this may demonstrate the landlord is not acting in good faith in a present case.

If there are comparable vacant rental units in the property that the landlord could occupy, this may suggest the landlord is not acting in good faith.

The onus is on the landlord to demonstrate that they plan to occupy the rental unit for at least 6 months and that they have no dishonest motive.

I accept the agreed-upon testimony of these parties that the Landlord owns units #3 and #4 in this rental building. However, I find that the parties, in this case, offered conflicting verbal testimony regarding the current status of unit #4. The Tenants claimed that unit #4 is vacant and The Landlord claimed that unit #4 is rented. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

As stated above, it is the Landlord who, issued the Notice to end tenancy that is before these proceedings, and therefore it is the Landlord who holds the burden of proof in these proceedings. To support their claim the Landlord testified that unit #4 is currently rented to their niece, in a verbal month-to-month tenancy that began sometime in December 2022. The Landlord presented their niece (the "Witness T.T.") to support this claim.

I have reviewed Witness T.T.'s testimony and I find that the witness offered a hesitant and unclear account of their tenancy with this Landlord. Which causes me to doubt their credibility. Specifically, the witness struggled to answer several questions from this Arbitrator which reasonably, ought to have been answered with ease; including, "What is your address?" and "When did you move in?"

Additionally, I find that there is no evidence before me to show that unit #4 was rented at the time this Notice to end tenancy was issued on August 31, 2022, by this Landlord.

Overall, I find that the Landlord has not provided sufficient or compelling evidence to persuade me that unit #4 was occupied when this Notice was issued or that it is currently occupied. Based on the testimony I received in these proceedings; I find it more likely than not that this Notice was issued by the Landlord with ulterior motives as there is a comparable vacant rental unit in the property that the landlord could occupy.

Therefore, I grant the Tenants' application to cancel the Notice dated August 31, 2022 and find that the Notice has no force or effect. This tenancy will continue until legally ended in accordance with the *Act*.

Section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenants have been successful in their application to dispute the Notice, I find that the Tenants are entitled to recover the filing

fee paid for this application. The Tenants are granted permission to take a one-time deduction of \$100.00, from their next month's rent.

Conclusion

The Tenants' application to cancel the Notice is granted, and I find the Notice dated August 31, 2022, is of no effect under the *Act*.

This tenancy will continue until legally ended in accordance with the *Act*.

The Tenants are authorized a one-time rent reduction of \$100.00 from a future month's rent payable to the Landlord, to recover the cost of the filing fee from the Landlord.

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: January 30, 2023

Residential Tenancy Branch