



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

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. The landlord acknowledged the evidence submitted by the tenant. The tenant was not served the landlords documentation, accordingly; it was not considered in making a decision however the landlords testimony was. Both parties 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

Both parties agree that the tenancy began on July 15, 2020. Rent in the amount of \$1300.00 is payable in advance on the first day of each month. The tenant confirmed that he received a Two Month Notice to End Tenancy for Landlords Use of Property on September 29, 2022 with an effective date of December 1, 2022 from the landlord and that a close family member would be moving in.

JS testified that his mother-in-law and six-year-old son would be moving in. JS testified that his son suffers from severe autism. JS testified that his son needs a safe space and that his mother-in-law will assist in caring for him. JS testified that his family has applied for in-home healthcare to help his son with his overall health and education. JS testified that his son's health has declined to the point where he has outbursts that involved breaking the TV and "broken himself on head". JS testified that he has no issue with the tenant, but his family situation has changed. JS testified that he's not sure where the tenant's misinformation about a brother-in-law moving in comes from. JS testified that this is a family issue and not a rental issue. JS testified that he wants the tenancy to end and to be granted an order of possession.

PS testified that he will move out if the landlord gives him one year to do so. PS testified that the landlord ask him for a \$100 rent increase, for which he declined. PS was told that the mother-in-law and brother-in-law was going to be moving but also heard a cousin was going to move in. PS testified that he was not aware of the landlords son's health issues. The tenant testified that the landlord has been spreading lies about his tenancy. The tenant testified that he thinks the landlord will be renting the suite out a higher rate and that he has no intention to have family members move in.

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 tenant made several allegations based on speculation but lacked sufficient evidence to corroborate those allegations. The landlord gave clear, concise, and compelling testimony. He provided details as to the logistical and health benefits for his mother-in-law to move into the basement with his son who suffers from Autism. Based on the above, and on a balance of probabilities, I find that the landlord has issued the

notice in good faith. As a result, the landlord is entitled to an order of possession pursuant to Section 55 of the Act. The notice complies with section 52 of the Act in form and content. The tenancy is terminated.

The Notice remains in full effect and force.

Conclusion

The tenancy is terminated. The landlord is granted an order of possession. The tenants application is dismissed in its entirety without leave to reapply.

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: February 16, 2023

Residential Tenancy Branch