



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDCT, OLC, FFT

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 October 3, 2022 the tenants applied for:

- an order to cancel a Two Month Notice for Landlord's Use, dated September 27, 2022 (the Two Month Notice);
- compensation for monetary loss or other money owed;
- an order for the landlord to comply with the Act, Regulation, and/or tenancy agreement; and
- the filing fee.

Those present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were 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. Landlord GS confirmed that DL was aware of the hearing, and that she was representing him.

Preliminary Matter

The Residential Tenancy Branch Rules of Procedure 2.3 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.

As they are not related to the central issue of whether the tenancy will continue, I dismiss, with leave to reapply, the tenants' claims for monetary compensation and an order for the landlord to comply with the Act, Regulation, and/or tenancy agreement.

Issues to be Decided

- 1) Are the tenants entitled to an order cancelling the Two Month Notice?
- 2) If not, are the landlords entitled to an order of possession?
- 3) Are the tenants entitled to the filing fee?

Background and Evidence

While I have considered the documentary evidence and testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties agreed on the following particulars of the tenancy. It began August 1, 2014; rent is \$820.00, due on the first of the month; and the tenants paid a security deposit of \$410.00, which the landlord holds in trust. The parties agreed that the previous landlords were current landlord GS's father and brother.

The landlord testified they served the Two Month Notice on the tenants by posting it to the door on September 27, 2022; the tenants testified they received it on September 28, 2022.

A copy of the Two Month Notice was submitted as evidence. It is signed and dated by the landlord, gives the address of the rental unit, states an effective date, states the grounds for the Notice, and is in the approved form. The Notice indicates the tenancy is ending because the landlord is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends to occupy the rental unit.

The landlord testified that she is the sole shareholder in the family corporation, as her father has passed away, and her brother is no longer associated with the property following a January 2022 related partner transfer.

The landlord testified that they had intended for her stepson to occupy the rental unit beginning December 2022.

The landlord testified that her stepson, who has mental health challenges, had been living in a community several hours away, and as a family they decided he would move to the same community as the landlords so that his father can provide him with the support he needs. The landlord testified her stepson is currently living in a recreational vehicle in a neighbouring municipality, waiting to move into the rental unit. The landlord testified that her stepson cannot move in with her and her spouse.

The tenant testified that when landlord GS first entered the rental unit, she stated that she could get three times the rent the tenants were paying. The tenants testified that their heating was cut off in November 2022, and that their cable was cut off.

The tenants testified that their unit is the only one in the building that has not been renovated.

The tenants testified that since they were served the Two Month Notice in September 2022, there have been other units available in their building and a neighbouring building that the stepson could have moved into. The landlord testified she does not own the neighbouring building, but manages it for a family member. The tenants testified that a unit in their building was available in September 2022, which the landlord's stepson could have moved into. The tenants testified there is now a unit in the neighbouring building, and that if it is owned by the landlord's family member, the stepson should be able to move in there. The tenants testified that the landlord has said she has other properties; the tenants queried why the landlord could not move their stepson into one of these other properties.

The landlord testified that units in the two buildings have been being renovated, and the landlords could not rent them out until they received the final occupancy permits. The landlord did not explain why her stepson could not move into the unit that the tenants claimed became available in the tenants' building in September 2022, or why the stepson could not move into any other unit in either of the properties.

The tenants testified that the landlord had wanted to raise their rent to \$2,500.00, and that the tenants had agreed to the rent increasing to \$1,100.00 until they spoke with the Residential Tenancy Branch. The tenants' written submission states that on December 22, 2021 the landlord called tenant JS, pressuring him to increase the rent above the legal limit, threatening eviction unless the tenants agreed to increase the rent to \$1,100.00.

The landlord testified that in December 2021 or January 2022, she had a discussion with the tenants to see if the parties could reach a mutual agreement to increase the rent to \$1,100.00, but the tenants did not agree.

The landlord did not submit documentary or witness evidence in support of the landlords' position that the landlords' stepson will occupy the rental unit.

Analysis

Based on the testimony of the parties, I find the Two Month Notice was served by posting it to the door on September 27, 2022 and was received by the tenants on September 28, 2022. I find the landlord served the tenants in accordance with section 88 of the Act.

As the tenants received the Two Month Notice on September 28, 2022 and applied to dispute it on October 3, 2022, I find the tenants met the 15-day deadline set out by section 49(8) of the Act.

As the Two Month Notice is signed and dated by the landlord, gives the address of the rental unit, states an effective date, states the reason for ending the tenancy, and is in the approved form, I find it meets the form and content requirements of section 52.

The standard of proof in a dispute resolution is on a balance of probabilities, which means it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

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.

Policy Guideline 2A explains that 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 Act or the tenancy agreement.

Section 49(4) of the Act states:

(4)A landlord that is a family corporation may end a tenancy in respect of a rental unit if 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.

The Two Month Notice, dated September 27, 2022, indicates the landlord is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends to occupy the rental unit. The landlord testified that she is sole shareholder in a family corporation, and intends for her stepson to occupy the rental unit.

The tenants have submitted that the landlord has attempted to raise their rent above the legal limit, threatening them with eviction if they do not agree, and that a unit in their building became available in September 2022, which the stepson could have moved into. The tenants also argue that as the landlord manages a neighbouring building for one of her family members, she also could have moved the stepson into units available there.

The landlord testified that they had a discussion with the tenants to see if the parties might come to a mutual agreement on a rent increase. The landlord testified that they have been renovating units, and are not able to rent out a unit until they receive the final occupancy permit. The landlord did not explain why her stepson could not move into the unit that became available in September 2022, or any other unit in either of the properties. The landlord did not submit documentary evidence in support of her position or present witness testimony.

Based on the preceding, I find on a balance of probabilities that the landlord has failed to prove the reason for the Two Month Notice, and that the Two Month Notice was served in good faith.

Therefore, the Two Month Notice is cancelled, and the tenancy will continue until it is ended in accordance with the Act.

I note that though the landlord indicated on the Two Month Notice they are a family corporation, they did not submit documentary evidence demonstrating the composition of the family corporation.

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 are successful in their application, I order the landlord to pay the \$100.00 filing fee the tenants paid to apply for dispute resolution.

Pursuant to section 72 of the Act, the tenants are authorized to make a one-time deduction of \$100.00 from a future rent payment in satisfaction of the above-noted award.

Conclusion

The tenants' application to dispute the Two Month Notice is granted.

The Two Month Notice for Landlord's Use is cancelled; the tenancy will continue 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: February 14, 2023

Residential Tenancy Branch