



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNL, RP

Introduction

This hearing convened to deal with the tenants' application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The tenants applied for an order cancelling the Two Month Notice to End Tenancy for Landlord's Use of Property (Notice/2 Month Notice) issued by the landlord and an order requiring the landlord to make repairs to the rental unit.

The tenants and the landlord's agent (agent) attended and the parties were affirmed.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral, written, and other evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced in this Decision. Further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Should the 2 Month Notice be cancelled or upheld?

Are the tenants entitled to an order requiring the landlord to make repairs.

Background and Evidence

The written tenancy agreement filed in evidence showed a tenancy start date of June 1, 2019, for a monthly rent of \$2,400. The tenancy agreement listed only PS as a tenant; however, both parties present for the hearing submitted that the other listed tenant, NS, was supposed to be listed, as they have been living in the rental unit as a tenant since the beginning of the tenancy.

The evidence shows that the agent issued the tenants the Notice by registered mail on September 26, 2022, and the tenants confirmed receiving the Notice on October 3, 2022. The Notice was dated September 26, 2022, and listed an effective move-out date of December 14, 2022. Filed in evidence was a copy of the Notice.

The Notice listed as reason for ending the tenancy is that the rental unit will be occupied by the child of the landlord or landlord's spouse.

The tenant's application was filed within 15 days after service allowed by the Act to dispute the Notice.

Pursuant to section 7.18 of the Rules, the landlord proceeded first in the hearing to give evidence to support the Notice.

The agent testified as to the reason the 2 Month Notice was issued. In response to my inquiry as to documentary evidence, the agent first said the evidence was the Notice itself. When pressed further, the agent then said that the owner was living in Alberta, had a job change, and wanted to move to British Columbia. The agent said the owner's son would move into the rental unit and eventually, the owner would move in as well.

Other than a copy of the 2 Month Notice and the registered mail showing service of the 2 Month Notice, the landlord provided no further documentary evidence.

Tenant's response –

The tenants wrote in their application the following:

We are disputing as we feel the Landlord is not acting in good faith. We would like to come to a resolution that benefits both parties and feel that this can only be achieved through dispute resolution and mediation at this time. We would have loved more time to wait for a response from the Landlord's agent regarding the proposed extension to our lease that we sent to him, however, this would have made us miss the deadline to submit our application for dispute resolution.

[Reproduced as written]

The tenant said that the landlord's son, who they did not know, showed up at their door one day unannounced to look at the property. The tenants submitted that the landlord's son said they were from Toronto, not Alberta.

As to their request for repairs, the tenant submitted that their garage door is inoperable and has been for over a year. The tenant confirmed that the landlord has sent out technicians to the property, but the garage door still continues to be inoperable. The tenant believed the hardware for the garage door were defective.

The agent said they would have another technician attend the rental unit to repair the garage door.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Section 49 (3) of the Act states that a landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

When a tenant disputes a Two Month Notice to end tenancy, the landlord has the burden to prove that not only do they intend to use the rental unit for the stated purpose, but also that the Notice was given in good faith.

Rule 6.6 provides that the "*standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed*".

Upon review of the Two Month Notice to End Tenancy dated September 26, 2022, I find that Notice to be completed in accordance with the requirements of section 52 of the Act and I find that it was served upon the tenants in a manner that complies with section 88 of the Act.

I find the hearsay testimony of the agent is insufficient to support the 2 Month Notice. The agent, I find, provided no specific details, such as employment records to show the owner had a job change which would have relocated the owner to the vicinity of the rental unit, or other documents. Neither the owner nor child were present at the hearing to provide direct testimony, nor were there supporting documents, such as records, an affidavit or statutory declaration.

Apart from that, the reason listed on the 2 Month Notice was that the landlord's child intended to occupy the rental unit, not the owner. I find the agent's testimony was inconsistent as to whether the owner or their son intended to occupy the rental unit, which in turn, contradicted the reason on the Notice.

While the tenants raised the good faith intent in their application, I find it is not necessary to consider the good faith of the landlord as there was insufficient evidence that the landlord's child truly intended to move into the rental unit as a living accommodation for at least 6 months.

For the above reasons, I find that the landlord has provided insufficient evidence to prove the reason listed on the Notice. I therefore grant the tenants' application.

As a result, I **ORDER** that the 2 Month Notice dated September 26, 2022, for an effective move-out date of December 14, 2022, is **cancelled**, and it is of no force or effect. The tenancy will continue until it is ended in accordance with the Act.

The landlord's agent is cautioned that although I have cancelled the 2 Month Notice, they should not view this cancellation as an opportunity to serve another 2 Month Notice for the same reason in order to rehabilitate their insufficient evidence for this 2 Month Notice.

As to the tenants' request for repair to the garage door, the agent said they would have a technician attend the rental unit and make the repairs. For this reason, I do not issue the landlord an order to make the repairs at this time.

Should the repair not be completed promptly, the tenants are at liberty to file for dispute resolution seeking those orders.

Conclusion

The tenants' application has been granted as I have ordered the 2 Month Notice cancelled and is of no force or effect.

The tenancy will continue until ended in accordance with the Act.

I have not dealt with the tenants' request for an order requiring the landlord to make repairs due to the assurance of the landlord's agent that they would send out a technician to repair the garage door.

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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: February 27, 2023

Residential Tenancy Branch