



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on September 21, 2022 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") dated September 9, 2022;

The Tenant and the Landlord's Agent G.C. attended the hearing at the appointed date and time. At the start of the hearing, the parties confirmed service and receipt of their respective Application and documentary evidence packages. I find these documents were sufficiently served pursuant to Section 71 of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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.

Issue(s) to be Decided

1. Is the Tenant entitled to an order to cancel a Two Month Notice, pursuant to Section 49 of the *Act*?
2. If the Tenant is not successful in cancelling the Two Month Notice, is the Landlord entitled to an Order of Possession pursuant to section 55 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on May 1, 2017. Currently, the Tenant is required to pay rent in the amount of \$1,800.00 which is due on the first day of each month. The Tenant paid a security deposit in the amount of \$900.00 which the Landlord continues to hold. The Tenancy continues to occupy the rental unit.

The Landlord's Agent testified that the Two Month Notice was served to the Tenant on September 9, 2022 by posting it to the Tenant's door. The Tenant confirmed having received the Two Month Notice on the same day. The Landlord's reason for ending the tenancy on the Two Month Notice is;

"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)."

The Landlord's Agent stated that the Landlord owns the home and is seeking to occupy the rental unit once they gain vacant possession. The Landlord's Agent stated that the Landlord is a grandmother and wishes to have her own space as she currently resides with her daughter. The Landlord's Agent stated that the rental unit is conveniently located only a short distance away from the Landlord's grandson's school, therefore, the Landlord's grandson can stay with the Landlord during the week to attend school and be able to join extra curricular activities.

The Landlord's Agent stated that the Landlord had previously intended to demolish the rental unit, however, given the change in the housing market and building costs, the Landlord has decided to occupy the rental unit as is, at least until such a time that her young grandchildren graduate from school. The Landlord provided an affidavit in support.

The Tenant responded by stating that the Two Month Notice has been served in bad faith. The Tenant stated that the Landlord has intended to demolish the rental unit since purchasing the rental unit. The Tenant stated that the Landlord has asked the Tenant to vacate on a number of occasions and offered buyouts and mutual agreements to end tenancy, however, the Tenant has refused these offers. The Tenant stated that the Landlord has been unsuccessful with ending a tenancy with a One Month Notice for Cause, which has resulted in the Landlord serving a Two Month Notice instead. The

Tenant feels as though the Landlord is required to serve a Four Month Notice for Demolition instead.

The Tenant stated that he feels as though the Landlord has sent people to intimidate him as the Tenant has experienced regular vandalism and the rental unit. The Tenant stated that the Landlord has threatened to employ a lawyer and that they would gladly live in the rental unit for 6 months to a year. The Tenant referred to an audio recording which was not submitted into evidence.

The Tenant stated that the Landlord has been approved for a new demolition permit which is dated January 20, 2023. The Tenant submit evidence in support that there was a final inspected completed. I note that the document submitted by the Tenant shows that the Application for the permit was made on: May 10, 2017, the issue date was December 15, 2021, and the completed date is January 20, 2023.

Analysis

Based on the oral testimony and documentary evidence, and on a balance of probabilities, I find:

Subsection 49(3) of the Act sets out that a landlord may end a tenancy in respect of a rental unit where the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. The Landlord's Agent stated that the Landlord intends to occupy the rental unit if they gain vacant possession and for at least 6 months.

The Landlord served the Tenant in person with the Two Month Notice on September 9, 2022. The Tenant confirmed having received the notice on the same date. I find the Two Month Notice was sufficiently served pursuant to Section 88 of the Act.

According to subsection 49(8) of the Act, a Tenant may dispute a notice to end tenancy for Landlord's use by making an application for dispute resolution within fifteen days after the date the Tenant receives the notice. The Tenant received the Two Month Notice on September 9, 2022 and filed the Application on September 21, 2022. Therefore, the Tenant is within the 15 day time limit under the *Act*.

The Landlord's Agent testified that that the Landlord is seeking vacant possession of the rental unit in order to occupy the rental unit and to look after the their grandson while they are attending school and activities. The Landlord's Agent acknowledged that the

Landlord has previous been interested in demolishing the rental unit, however, given the change in the housing market, has decided to occupy the rental unit as is.

While the Tenant stated that the Landlord has made several attempts at negotiating an end of tenancy, I find that this does not demonstrate bad faith. Furthermore, I accept that the Landlord has previously intended the demolish the rental unit, however, nothing is preventing the Landlord from changing their mind and to occupy the rental unit for at least 6 months instead. While the Tenant provided a document which indicates that the Landlord received a permit, I find that the document shows that the application for the permit was made in May of 2017. I find it is reasonable that the Landlord's plans may have changed during this time. Lastly, I find that the Tenant has provided insufficient evidence to demonstrate that the Landlord is responsible for the vandalism.

I dismiss the Tenant's Application to cancel the Two Month Notice dated September 9, 2022, without leave to reapply. The Landlord and the Tenant should be aware that if the Landlord fails to use the rental unit as stated above, for at least 6 months, then pursuant to section 51 of the Act, the Landlord may be subject to paying the Tenant the equivalent of 12 months' rent as a penalty.

Under section 55 of the Act, when a Tenant's Application to cancel a Notice to End Tenancy is dismissed and I am satisfied that the Notice to End Tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the Two Month Notice complies with the requirements for form and content. I accept that the rent has been paid for February 2023. I find that the Landlord is entitled to an order of possession effective on February 28, 2023 at 1:00PM, pursuant to section 55 of the Act. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Conclusion

The Tenant's Application seeking cancellation of the Two Month Notice dated September 9, 2022, is dismissed without leave to reapply. The Landlord is granted an order of possession effective on February 28, 2023 at 1:00PM. The order should be served onto the Tenant as soon as possible and may be filed in the Supreme Court and enforced as an order of that Court.

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 07, 2023

Residential Tenancy Branch