



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants filed under the Residential Tenancy Act (the “Act”), to cancel Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Notice”) issued on September 18, 2022, for compensation for monetary loss or other money owed, to reduce rent for repairs, services or facilities agreed upon but not provided, to have the landlord provide services or facilities required by law and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions at the hearing.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenants indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice to End Tenancy. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenants’ request to set aside the Notice to recover the filing fee at these proceedings. The balance of the tenant’s application is dismissed, with leave to reapply.

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

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issue to be Decided

Should the Notice be cancelled?

Background and Evidence

The tenancy began in 2018. Rent in the amount of \$1,250.00 was payable on the first of each month. The tenant paid a security deposit of \$675.00. The female tenant moved into the premises in 2020.

The parties agreed that the Notice was served on the tenants indicating that the tenants are required to vacate the rental unit on November 30, 2022.

The reason within the Notice states that:

- 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 testified that they live on the main floor of the house and rent the basement unit to the tenants. The landlord stated that they want the rental unit back as an extension of their home for their own use and for the use of their adult children when visiting.

The landlord testified that their husband had an unexpected death two years ago and they need the space to accommodate their family and have no plans to rent the basement portion of the house

Filed in evidence is a letter from the landlord's son,

"My father passed away in June Of 2020; his passing was unexpected and sudden. This left my mother overwhelmed and alone to deal with everything herself.

I have dropped my position from full-time to part-time as a correctional officer. This is so I can travel to [removed] BC, more often to help my mother. I the near future, my plans are to permanently move to [removed] BC I will be staying in the basement of the house. ..."

[Reproduced as written]

Filed in evidence is a letter from the landlord's daughter,

"My fathers untimely death made my mom very lonely. I decided to visit my mom and stay with her along with my two children. So we need space. ..."

[Reproduced as written]

The female tenant testified that they moved into the rental unit in 2020, with their daughter, and pets. The tenant stated that there has been nothing but problems since then. The tenant the landlord turned off the cable and heat and they had a prior hearing regarding the heat which the landlord was ordered to keep the heat a certain temperature, which the landlord has complied with, until last night.

The female tenant testified that the landlord also removed the stove and refrigerator and promised to replace them. The tenant stated that the stove was repaired; however it has been over 2 years for the repair of the refrigerator and they have been using one provided by their mother in-law for the past year. The tenant stated every time they ask for repairs the landlord tells them to get out. The tenant stated that the landlord rents rooms in her home to students and they believe the landlord wants the rental unit to rent to others for more money.

The tenant testified that the landlord's children do not come to the premises very often over the years.

The tenant testified that in September 2022, after the Notice was issued the police attended because the landlord threatened the male tenant and on October 31, 2022, the landlord smashed the security camera they had installed on the premises.

The landlord responded that they never raised the rent during the tenancy, and they have no plans to re-rent the premises. The landlord stated they are not renting their premises to anyone they have guests; however, the tenant keeps call them tenants.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

How to end a tenancy is defined in Part 4 of the Act. Section 49(1) of the Act a landlord may end a tenancy by giving notice to end the tenancy.

I have considered all of the written and oral submissions submitted at this hearing.

In this case, the landlord lives on the main floor of the premises and rents the basement portion of the premises to the tenants. The landlord during the state of emergency became a widower and no longer wants to rent the basement portion of premises and wants to be able to use the space as an extension of their home for their own use and to accommodate their adult children and family when visiting. I find that is reasonable.

While the evidence of the tenant's was that the landlords' children rarely visit; however, this simply can support the lack of space required for their needs. In addition, it is not unreasonable that the landlord's adult children would want to visit more since the passing of their father in support of their mother wellbeing.

The tenants have provided text messages that start on September 10, 2022, that show before the Notice was issued that the landlord had concerns regarding a fan being left on, and possibly smoking inside the rental unit. This does not lead me to believe there is an ulterior motive for ending the tenancy.

The tenants referred to a prior hearing that alleged the lack of heat, I note the tenant's application was filed on November 2, 2022, after the Notice was issued and the hearing was held on November 14, 2022. I have reviewed the decision the Arbitrator did not find a breach of the Act by the landlord. Rather, the parties agreed to settle the matter and the parties established what temperature the heat would be kept at in the rental unit. This does not lead me to believe the landlord is avoiding their obligation under the Act. I have noted the filed number on the covering page of this decision.

Further, the tenants refer to a broken refrigerator that had been removed long before the Notice was issued. The evidence of the tenants was that they have been using a refrigerator provided to them by their in-laws for the past year. The text message show on October 13, 2022, after the Notice was issued the tenants asking the landlord if the refrigerator can be fixed. The landlord responded that it was fixed and had been sitting in the garage and were informed of this many times. This does not lead me to believe that the landlord has an ulterior motive for ending the tenancy as the text messages regarding the refrigerator are dated after the Notice was issued and the refrigerator was repaired.

I accept the evidence of the landlord that they truly intend to use the premises as an extension of the own home, for their own purposes and no longer want renters within the premises to which they live. I find the Notice is valid and enforceable. Therefore, I dismiss the tenants' application to cancel the Notice.

Although at the hearing, I indicated that I could not extend the effective date of the Notice, as it would be past the effective date within the Notice, if I found the Notice to be valid as occupancy rent for February 2023 had not been paid. However, I failed to consider that rent for February 2023, is deemed to have paid as this is the tenants' compensation for receiving the Notice. Therefore, I find the tenancy will end on February 28, 2023, in accordance with the Act.

I should further note if rent for February 2023, was paid by the tenants and accepted by the landlord after the hearing. The tenants would still be entitled to receive compensation equal to one months rent under the Act.

As the tenancy legally ended on the effective date of the Notice, I find the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **1:00pm on February 28, 2023**. A copy of this Order must be served upon the tenants. This order must be served on the tenants and may be filed in the Supreme Court.

Since the tenants were not successful with their application, I find the tenants are not entitled to recover the filing fee from the landlord.

Conclusion

The tenants' application to cancel the Notice, is dismissed. The landlord is granted an order of possession.

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 15, 2023

Residential Tenancy Branch