



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNL, OPL

Introduction

This matter commenced on October 20, 2022, and an interim decision was made on October 25, 2022. In the interim Decision I had made Orders and cancelled the 10 Day Notice. The matter was adjourned to today's date solely for the purpose of hearing the merit of the Two Month Notice. The interim decision should be read in conjunction with this Decision.

Both parties appeared. The parties were reminded that they are still under affirmation.

The landlord complied with the interim decision by serving their evidence on the tenants by email and uploading a copy of the email showing their evidence was sent. The tenants testified that they served the landlord with their evidence in multiple emails sent on November 4, 2022. The landlord's agent was able to confirm that they received at least one package on November 4, 2022, which were text messages. While the tenants did not upload copies of the multiple emails they sent to the landlord as directed in the interim decision showing what documents had been sent; however, I found that if the landlord has an issue with any evidence that is **presented** by the tenants I will address it at that time. I will only consider evidence **that is presented** at this hearing by the parties in accordance with Rule 7.4, evidence not presented will not be considered.

I also note for the record that at times during the hearing, I had to caution the parties as they would interrupt each other, or not following my instructions.

Issues to be Decided

Should the Two Month Notice be cancelled?

Is the landlord entitled to an order of possession?

Background and Evidence

The parties agreed that the Two Month Notice was served on the tenants indicating that the tenants are required to vacate the rental unit on July 31, 2022. Filed in evidence is a copy of the Two Month Notice that complies with section 52 of the Act.

The reason stated in the Notice was 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 father or mother of the landlord or landlord's spouse.

The landlord's agent testified that the landlord's parents are currently living with the landlord's brother, wife and their three young children in a two-bedroom basement unit. The agent stated that this is no longer a suitable living arrangement.

The landlord's agent testified that the landlord wants the rental unit back for their parents to live and it is also convenience for their aging parents as it is close to their Mosque to which their father regularly attends and prays 5 times per day. The agent stated that the parents do not drive and on occasion will receive a ride from the priest of the Mosque.

Filed in evidence is a sworn affidavit of SM, the priest at the Mosque, dated September 14, 2022, that shows the father of the landlord attends the Mosque regularly 5 times a day.

The tenants testified that if, I the Arbitrator, read the certified translation of an audio recording it proves that the landlord did not issue the Two Month Notice in "good faith" as it clearly sets out the landlord wanted to increase the rent to \$2,300.00. The tenants stated that they followed up that conversation with the landlord by text message and negotiated a lower rent of \$2,250.00; however, this was an illegal rent increase. Filed in evidence is an audio recording in two parts, which a certified translation of the audio has been provided. Filed in evidence is a text message confirming this conversation.

The tenants testified that they spoke with SM the priest at the Mosque regarding their affidavit, and they were told by SM that that their sworn affidavit is wrong because they did not recall dropping the father at the address listed in their affidavit. The tenant confirmed they did not have SM as a witness or have them provide a corrected sworn affidavit.

The tenants testified that the landlord's parents can also attend a different Mosque that is located near where they are currently living, and it would be about the same distance.

The tenants testified that they also practise the same religion and because the landlord's parents are elders, they can stay at home to do their regular prayers and are not required to go the Mosque.

The tenants further demand that the landlord's parent should be required to provide their passport and visas from the past to show how often they were away.

The tenants testified that the landlord wanted them to pay another recent illegal rent increase. Filed in evidence is a text message, labeled phone chat, although undated, I am satisfied this was referring to the current Two Month Notice.

The landlord's agent argued that the certified translation of an audio recording was from June of 2021, not recently and the tenants paid the rent. The agent stated that this only became an issue after the Two Month Notice was issued, when the tenant's filed their amended application. The agent stated at their instructions they told the landlord that they did not follow the process right and to reimburse the tenants, which was done. The agent stated that the landlord's parents' circumstance as the home they have been residing in with their other son is no longer suitable to accommodate 7 people, four adults and three children, as it is only a two-bedroom basement unit, and that family needs the limited space for their own family. The agent stated it is reasonable that the landlord's parents would move into the subject property as it is close to the Mosque they have chosen to attend.

Analysis

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

The tenants allege that the landlord is ending the tenancy because the landlord wanted an illegal rent increase. As the issue of "good faith" has been raised I must be considered the landlord's honest intention with no dishonest motive.

In this case the landlord's parents are currently living with their other adult son, his wife and their three children in a two-bedroom basement unit. I find it is reasonable to conclude that this living arrangement would not be sustainable forever, as the children would grow and require more space.

The landlord's parents' intentions are to move into the rental unit which is close to the Mosque to which they attended regularly. This is supported by the affidavit of SM the priest of the Mosque. I find nothing turns even if I was to accept the tenant's submission that the address in the affidavit is wrong to where the priest dropped of the parent, which was unproved by the tenants. Clearly, the affidavit support this is the Mosque to which the landlord's parents attend regularly on a daily basis.

Further, while the tenants stated the landlord's parents can go to a different Mosque which is closer to where they are currently living with the other son or pray from home. However, if the landlord's parents wanted to attend that Mosque or pray from home they would have done so. It is unreasonable for the tenants to say how or where someone should practise their religion, even if they share the same religion.

Furthermore, the real issue is the current living arrangement of the landlord's parents, it is no longer viable as clearly there are too many people (7) residing in a two-bedroom unit. I find it is reasonable for the landlord's parent to move into the subject rental unit to give their son and his family the needed space for living and this would also further benefit the landlord's parents as they will be closer to the Mosque to where they attend daily.

While I accept the tenants have provided a recording and a certified translation of an audio recording of an alleged rent increase. However, this was from June of 2021 a year before the Two Month Notice was issued. Further, the tenants' may have negotiated with the landlord and agreed to the lower amount of rent, in writing, which was in a form of text messages. While I accept the proper process may have not been followed; however, this issue was only raised by the tenants in their amended application dated September 29, 2022, months after the Two Month Notice was issued on May 28, 2022. This cannot be a dishonest motive for ending the tenancy as the landlord was unaware of the tenants claim for compensation until after September 29, 2022.

The tenants refer to another text message, or phone chat, which is undated; however, I am satisfied that this was just prior to the Two Month Notice being issued. The tenants sent the landlord 8 text messages in a span of five minutes. The tenant stated in the text that "if you need rent plus utilities share plan with downstairs, then tell us how much will be rent then". The landlord's response was "I didn't ask any contract to be signed I mention our contract was finished last year and now my parents want to move into this

house...". This does not support the landlord issued the Two Month Notice with a dishonest intent.

In light of the above, I am satisfied that the landlord's parents truly intend to use the rental unit for their own purposes, and I find the landlord has no dishonest motive for ending the tenancy. Therefore, I find the Two Month Notice is valid and remains in full force and effect.

As the tenancy legally ended on the effective date of the Two Month Notice which was July 31, 2022, I find the tenants are overholding the premises.

I find the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two days** after service on the tenants. This order may be filed in the Supreme Court and enforced as an order of that court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

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

As I indicated in my interim Decision, that if I upheld the Two Month Notice, that I would not consider the tenants request to cancel the One Month Notice as the tenancy has legally ended. Therefore, I dismiss the tenant's application to cancel the One Month Notice only because I have already ordered the tenancy to end, not that the reasons for ending the tenancy within the One Month Notice were proven.

Conclusion

The tenants' application to cancel the Two Month Notice, is dismissed. As I have ended the tenancy based on the Two Month Notice, I find it not necessary to consider the merits of the One Month Notice.

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: March 1, 2023

Residential Tenancy Branch