



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL MNDC RP RR FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of a Two Month Notice to End Tenancy For Landlord's Use of Rental Property (the "Two Month Notice"), pursuant to section 49;
- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions.

No issues were raised with respect to the service of the tenants' application and evidence submissions on file.

The tenants however stated they did not receive the landlord's evidence submissions. The landlord's agent submitted that he sent the evidence package to the tenants by registered mail on January 26, 2023, and proof of such was provided on file. The tenants then acknowledged receiving the envelopes but stated that they did not open the envelopes as they had requested all documents be served to the address of their agent. The tenants stated they assumed the packages just contained the "same stuff" that they had applied for.

I found the tenants argument to be nonsensical. I am not sure why the landlord would be sending them the "same stuff" as their application. For all they know the landlord

could have been sending them a different Notice to End Tenancy or other important documents which they would have missed the deadline to respond to by ignoring what was inside the package. Therefore, I find the tenants to not be credible on this point and find they likely had received and opened the packages containing the landlord's evidence submissions. Although, the landlord did not serve the package on the tenants' agent as had been requested, I find the tenants had ample opportunity to review the evidence and forward it to their agent. The landlord's evidence submissions were accepted as evidence.

Preliminary Issue – Scope of Application

Residential Tenancy Branch Rules of Procedure, Rule 2.3 states that, if, in the course of the dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

Aside from the issue of whether or not the landlord had grounds to issue the Notice to End Tenancy, I am exercising my discretion to dismiss the remainder of the issues identified in the tenants' application with leave to reapply as these matters are not related. Leave to reapply is not an extension of any applicable time limit.

Issues

Should the landlord's Two Month Notice be cancelled? If not, is the landlord entitled to an order of possession? If successful, are the tenants entitled to recover the filing fee?

Background & Evidence

The rental unit is a full residential house the tenancy for which began in November 2016. The monthly rent was originally \$3000.00 however as of October 1, 2021 it was reduced to \$2500.00 as a result of the landlord removing a large portion of the backyard in order to subdivide the property. The rental unit is owned by S.B. and H.B. who are the father and mother of G.B. who is named as the landlord in this application.

On September 24, 2022, the landlord served the tenants with a Two Month Notice dated September 23, 2022. The Two Month Notice was issued on the grounds that the landlord's mother and father intend to occupy the rental unit. The tenants' application to dispute the Two Month Notice was filed in the time period permitted under the Act.

The landlord's agent submits that the S.B. and H.B. both intend in good faith to occupy the rental unit. The landlord's agent submits that S.B. and H.B. are currently renting a property together with their son G.B. their daughter-in-law and their grandson. Their son is currently building the house right beside the rental property. While this house is being completed, their son and his family will reside with them in the rental unit currently occupied by the tenants. Once the son's house is completed the son and his family will either sell or move-in to the newly built house. S.B. and H.B. want to be close to their son when and if he moves into the new house. Affidavits from S.B. and H.B. to this effect were submitted as evidence.

The tenants are disputing the Two Month Notice on the grounds that it was not issued in good faith. The tenants submit the landlord is trying to abuse the rental market and evict them because they are paying low rent especially after the recent \$500.00 rent reduction due to removal of portion of the backyard. The tenants submit the landlord used to reside in a house behind the rental unit which they sold before moving 14 months ago. The tenants submit the landlord could have evicted them at that time if the landlord really wanted to occupy the rental unit. The tenants submit that all along the landlord had told them that they all would be moving into the newly built house. The tenants submit the entire family lived together previously in the house they sold and is all still living together in the rental house.

Analysis

Section 49 of the Act contains provisions by which a landlord may end a tenancy for landlord's use of property by giving notice to end tenancy. Pursuant to section 49(8) of the Act, a tenant may dispute a Two Month Notice by making an application for dispute resolution within fifteen days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the Two Month Notice.

Further, Two Month Notices have a good faith requirement. *Residential Tenancy Policy Guideline #2* "Good Faith Requirement when Ending a Tenancy" provides the following guidance:

A claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End the Tenancy.

If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive for ending the tenancy.

The tenants raised some valid points in their testimony which call into question the good faith intention of the landlord. The tenants questioned why the landlord did not evict them 14 months ago when they first sold the house they were living in just behind the rental property. If the landlord truly intended to occupy the rental property to be close to their son who is building a house next door this was a valid question raised by the tenants. The landlord's agent did not provide any response to this point and the landlord's themselves did not attend the hearing. By not attending the hearing, the landlord's also were not available to respond to the tenants testimony that the landlord had previously advised them that the plan all along was for the entire family to move into the newly built house. Further, although the landlord's affidavit speaks to saving rent by moving into their own house, the landlords provided no evidence of the difference in rent they are currently paying versus what they would saving by moving into their own house.

Given the circumstances of this case, I find on a balance of probabilities, that it is more likely than not that the landlord is only attempting to end this tenancy after the tenants sought a significant rent reduction for the removal of the portion of the backyard.

I find that there is sufficient evidence of an ulterior motive to end the tenancy on the part of the landlord. I find the landlord has failed to establish that they do not have an ulterior motive for ending the tenancy and that they truly intend to use the rental unit for the purpose stated in the Notice.

As the tenants were successful in this application, I find that the tenants are entitled to recover the \$100.00 filing fee paid for this application from the landlord. The tenants may reduce a future rent payment in the amount of \$100.00.

Conclusion

I allow the tenants' application to cancel the landlord's Two Month Notice, dated September 23, 2022, which is hereby cancelled and of no force or effect. This tenancy continues 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: March 13, 2023

Residential Tenancy Branch