



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a residential tenancy dispute. On February 7, 2023 the tenants applied for an order to cancel a Two Month Notice for Landlord's Use, dated January 31, 2023 (the Two Month Notice);

The hearing was attended by the tenants and their advocate, one of the landlords, the landlords' son, and by landlords' counsel, and the landlord's interpreter. I will refer to the tenants' side collectively as "the tenants" and the landlords' side collectively as "the landlords." Those present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were also made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

Neither party raised an issue regarding service of the hearing materials.

Issues to be Decided

- 1) Are the tenants entitled to an order to cancel the Two Month Notice?
- 2) If not, are the landlords entitled to an order of possession?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties agreed on the following particulars of the tenancy. It began on November 28, 2019; rent is \$2,050.00, due on the first of the month; and the tenants paid a security deposit of \$900.00 which the landlords still hold.

A copy of the Two Month Notice was submitted as evidence. The Notice is signed and dated by the landlord, gives the address of the rental unit, states an effective date of April 5, 2023, states the reason for ending the tenancy, and is in the approved form. The Two Month Notice indicates two reasons the tenancy is ending: 1) the rental unit will be occupied by the child of the landlord or the landlord's spouse, and 2) because the landlord is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

The landlords testified that the reason for the notice is because their son will occupy the unit, and that the second reason was indicated in error.

The landlords testified the Two Month Notice was served on the tenants in person on January 31, 2023, which the tenants confirmed.

The Two Month Notice names the tenants using the names noted on the cover page of the decision.

The landlords presented affirmed affidavits from one of the landlords and the landlords' son, stating that they intend for the son to move into the unit permanently, and that the tenants also represent themselves using the names on the Two Month Notice. The landlord testified that they did not check the tenants' identification.

The tenants testified that their legal names are those given as the applicants in this dispute, and that they are not also known by the names on the Two Month Notice.

No tenancy agreement was submitted as evidence.

The tenants testified that the landlord must know their legal names as the landlord gives them their mail. The landlord testified that they had never paid attention to the names on the tenants' mail in the past, and that they have not seen the tenants' mail in the last month, as the mailbox is right at the door.

The tenants testified that the landlord's son is single, and that the unit is a three-bedroom, one-and-a-half bath. The tenants testified that they are a family of six, and submitted that the landlord has not provided a reason why their son wants to move in.

The son's affidavit states that he intends to occupy the unit as he is moving out of his parents' residence and has no other place to live but the rental unit.

Analysis

Section 49 of the Act permits a landlord to end a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. Section 49 defines a "close family member" as, in relation to an individual, the individual's parent, spouse, or child, or the parent or child of that individual's spouse.

Based on the testimony of the parties, I find the landlords served the Two Month Notice on the tenants in accordance with section 88 of the Act, and that the tenants met the application deadline required by section 49(8) to dispute it.

I find the Two Month Notice meets the form and content requirements of section 52 of the Act.

As described in Residential Tenancy Branch Rule of Procedure 6.6, when a tenant applies to dispute a notice to end tenancy, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice is based. And, as noted in Residential Tenancy Policy Guideline 2A: *Ending a Tenancy for Occupancy by Landlord, Purchaser, or Close Family Member*, when the issue of a dishonest motive or purpose for ending the tenancy is raised by a tenant, the onus is on the landlord to establish they are acting in good faith.

The Notice indicates that the child of the landlord or landlord's spouse will occupy the rental unit.

The landlords have submitted an affirmed affidavit stating that they intend for their son to live in the unit, and that they knew the tenants by the names listed on the Two Month Notice.

I note that the landlords' son attended the hearing and provided an affirmed affidavit indicating he intends to occupy the unit because he is moving out of his parents' residence and has no other place to live but the rental unit. I find this lends support to the landlords' position.

The tenants denied they were also known by the names listed on the Two Month Notice. Based on the affirmed affidavit submitted by the landlord, I find that the tenants

are known by their legal names given as the applicants in this dispute, and also by the names on the Two Month Notice.

The tenants have not called into question the landlords' and their son's assertion that the son will occupy the unit, and the tenants have not suggested that the landlords are acting in bad faith.

Considering the evidence before me, I find, on a balance of probabilities, that the landlords have proven the grounds for the Notice.

The Two Month Notice is upheld. The landlords are entitled to an order of possession in accordance with section 55 of the Act. The tenancy will end on March 31, 2023, the corrected effective date of the Two Month Notice. The order of possession names each of the tenants by the two names they are known by.

The parties are advised that section 13(1) of the Act requires a landlord to prepare in writing every tenancy agreement entered into on or after January 1, 2004.

Conclusion

The tenants' application is dismissed.

The Two Month Notice is upheld.

The landlords are granted an order of possession, which will be effective March 31, 2023, at 1:00 p.m.

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 20, 2023

Residential Tenancy Branch