



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNL, FFT

Introduction

The Tenant applied for dispute resolution (“Application”) and seeks an order cancelling a Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Notice”) pursuant to section 49(8)(a) of the *Residential Tenancy Act* (the “Act”). They are also seeking to recover the cost of the filing fee under section 72 of the Act.

The Tenant, Y.H., attended the hearing and was assisted by their translator, Y.M. The Landlord, H.Q., attended with two agents, S.X. and S.X.2., who were authorized to speak on the Landlord’s behalf. The parties affirmed to tell the truth during the hearing. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

The Tenant testified that they served the Notice of Dispute Resolution Package (the “Materials”) on the Landlord on December 8, 2023 via mail. They were unsure if the Materials were served via regular mail or registered mail. S.X. confirmed that the Landlord had received the Materials and raised no issues with service. I find that pursuant to section 71(2)(c) of the Act that Tenant’s Materials were sufficiently served to the Landlord.

S.X. confirmed that the Landlord’s evidence had not been served to the Tenant. Rule 3.15 of the *Rules of Procedure* states that the respondent must ensure that evidence they wish to rely on is served on the applicant. Therefore, I exclude the Landlord’s evidence from consideration.

Issues to be Decided

1. Should the Notice be cancelled?
2. If not, Is the Landlord entitled to an Order of Possession
3. Can the Tenant recover the filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this Decision.

The parties agreed that the tenancy started on June 1, 2020 and that rent is \$2,350.00 per month due on the fifteenth day of the month. The tenancy was initially for a fixed term ending on June 15, 2022, then continuing on a month-to-month basis. A security deposit of \$1,180.00 was paid by the Tenant which the Landlord still holds. A copy of the tenancy agreement ("Tenancy Agreement") was entered into evidence by both parties. The Tenant still occupies the rental unit.

The Tenant is seeking to cancel a Two Month Notice. The Notice indicated the rental unit will be occupied by the Landlord or the Landlord's spouse and provides and effective date of February 15, 2023.

S.X. testified that on March 20, 2022, the Landlord went to meet the Tenant at the rental unit. The Landlord notified the Tenant that they would not extend the tenancy after June 15, 2022. The Tenant indicated to the Landlord they wanted to stay until September 2022. The Landlord intended to go back to China and come back in August 2022.

S.X. stated that the Tenant agreed to pay for the utilities instead of the Landlord increasing the rent and that the Tenant agreed to move out of the rental unit in September 2022.

On August 15, 2022 the Landlord attended the rental unit to fix the security alarm and the Tenant gave them two cheques for rent due on August 15, 2022 and September 15, 2022. The Landlord returned the cheque for September 15, 2022 as they had expected the Tenant to vacate the rental unit by that time. It was the Landlord's plan for their son to move back into the rental unit after they graduated university.

The Landlord then contacted S.X. and S.X.2 to help them with the rental unit. S.X.2 contacted the Tenant to see if they would agree to move out of the rental unit. Further post-dated cheques were received from the Tenant. As the Landlord thought the Tenants would be vacating the rental unit, S.X.2 asked the Tenant to leave by November 30, 2022. When the Tenant did not agree to leave the rental unit, the Notice was served on November 24, 2022.

S.X. clarified that the Landlord intended to occupy the rental unit and their son would live in the townhouse in which the Landlord currently resides.

The Tenant testified that during the meeting in March 2022 they said to the Landlord that they wanted to stay in the rental unit until their daughter graduated high school. The Landlord stated they could keep living in the rental unit. Post-dated cheques covering the rent to June 2023 were provided by the Tenant.

The Landlord went back to China in May 2022 and the Tenant paid the Landlord's wife the rent. The Tenant discussed staying in the rental unit after their daughter's graduation in June 2023 and the Landlord's wife agreed.

In August 2022 the Landlord contacted the Tenant saying that they needed to reconsider the agreement to continue renting and their Agent, S.X.2. made contact with the Tenant. S.X.2. was trying to make arrangements with the Tenant for parties to look at the house to buy it. Later S.X.2. stated rent would be raised to \$3,000.00 per month. The Tenant replied that the maximum that rent could be raised by was 2%. The Tenant agreed to pay for water and electricity if rent was not increased. I was referred to records of the conversation between S.X.2. and the Tenant that was submitted into evidence by the Tenant.

The Tenant argued that the reason given by the Landlord on the Notice is not honest as they originally wanted to sell the property or raise the rent to \$3,000.00 per month from the present amount of \$2,350.00 per month.

Analysis

Section 49(3) of the Act allows a landlord to end a tenancy if the landlord or a close family member intends, in good faith, to occupy the rental unit. Section 49(8) also allows the tenant to challenge the Notice within 15 days.

As the Notice was served on November 24, 2022 and the Tenant filed their Application on December 6, 2022, the Tenant had filed this Application in time to dispute the Notice.

Pursuant to *Rule of Procedure* 6.6, the onus is on the Landlord to prove, on the balance of probabilities, that Notice is valid. Additionally, Policy Guideline 2A states the landlord must demonstrate that they plan to occupy the rental unit for at least 6 months and that they have no ulterior motive for issuing the Notice. Policy Guideline 12 discusses the idea of good faith and the need not to have an ulterior motive for ending the tenancy.

The Landlord indicates on the Notice that they or their spouse will occupy the rental unit. During the hearing, the Landlord's Agent indicated that the Landlord wanted to move out of their present residence so that their son could live there. The Landlord then intended to live in the rental property. No evidence was provided to verify any of these assertions or why it was not possible for the Landlord's son to share the Landlord's current residence with them. The Landlord's son did not appear at the hearing and provided no evidence to support the Landlord's assertions.

Additionally, I find that the Tenant's testimony and the records of the conversation between the Tenant and the Landlord's Agent show the Landlord wanted to substantially increase the rent and had plans to show the rental property to potential buyers.

The above findings lead me to conclude that the Landlord has failed to prove, on the balance of probabilities, that they plan to occupy the rental unit for at least six months.

I grant the Tenant's Application and order that the Two Month Notice to End Tenancy for Landlord's Use of Property dated February 24, 2023 is canceled and the tenancy continues.

As the Tenant has been successful in their Application I find they are entitled to the reimbursement of the filing fee.

Conclusion

The Tenant's Application is granted.

The Notice is canceled and the tenancy continues.

I order that the Tenant may make a **one-time deduction of \$100.00** from a future rent payment in satisfaction of the return of the filing fee.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: April 18, 2023

Residential Tenancy Branch