



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, DRI-ARI-C, OLC

Introduction

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

- cancellation of the Two Month Notice to End Tenancy for Landlord's Use of Property, pursuant to section 49;
- disputation of an additional rent increase for capital expenditures, pursuant to section 43; and
- an Order for the landlord to comply with the *Act*, Regulation or tenancy agreement, pursuant to section 62.

Tenant MD, the landlord and the landlord's agent (the "agent") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Counsel submitted that the landlord and the landlord's agent attended at his office this morning; however, he has not been retained by them. Counsel submitted that he is permitting the landlord and the landlord's agent to call in from his office but since he has not been retained, he is not participating in this hearing. Counsel then left the room and did not participate in the hearing.

Both parties confirmed their email addresses for service of this Decision.

Preliminary Issue- Service

Tenant MD testified that they served the landlord with their application for dispute resolution and evidence via registered mail on February 10, 2023. A registered mail receipt for same was entered into evidence. The landlord confirmed receipt of same. I find that the landlord was served in accordance with section 89 of the *Act*.

The landlord did not submit any evidence for consideration.

Preliminary Issue- Severance

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") and the continuation of this tenancy is not sufficiently related to any of the tenants' other claims to warrant that they be heard together.

I exercise my discretion to dismiss all of the tenants' claims with leave to reapply except cancellation of the Notice.

Issues to be Decided

Is the Notice enforceable?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agree that monthly rent in the amount of \$2,200.00 is payable on the first day of each month. A written tenancy agreement was signed by both parties and a copy was submitted for this application. The tenancy agreement lists the landlord as the agent. The agent testified that he is the landlord's husband. The landlord testified that she owns the subject rental property.

Both parties agree that tenant SA was personally served with a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") on January 17, 2023. The tenants filed to dispute the Notice on January 30, 2023.

Tenant MD testified that the landlord previously listed the subject rental property for sale and that the landlord wants to sell the property, not move into it.

The landlord testified that she was originally planning on selling the subject rental property but now she wants to move into it. The landlord testified that she is currently renting a basement suite and that this is affecting her children's health, both of whom have asthma, which is why she wants to move. No documentary evidence to support the above testimony was entered into evidence.

Analysis

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

I find that the landlord has not met the required burden of proof as no documentary evidence was provided to substantiate her testimony. I find that the landlord has not proved that she has taken any steps to end her current tenancy or that her current tenancy is having a negative effect on her children's health.

Both parties agree that the landlord has previously listed the property for sale, tenant MD alleged that the landlord is not acting in good faith. According to Residential Tenancy Policy Guideline #2A, when the issue of a dishonest motive or purpose for

ending the tenancy is raised, the onus is on the landlord to establish they are acting in good faith. I find that the landlord's testimony at that of her agent are not enough to meet this onus.

I find that the Notice is cancelled and of no force or effect.

Conclusion

The Notice is cancelled and of no force or effect.

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: May 23, 2023

Residential Tenancy Branch