



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNL, DRI, FFT

Introduction

This hearing dealt with the Tenant's January 30, 2023 application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of a 2 Month Notice for Landlord's Use of Property pursuant to section 49;
- an order to dispute a rental increase, pursuant to section 43;
- an authorization to recover the filing fee for this application, under section 72.

All were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

At the outset of the hearing all the parties were clearly informed of the Rules of Procedure.

Issue(s) to be Decided

1. Is the Tenant entitled to an order cancelling the Notice?
2. Is the Tenant entitled to dispute a rent increase?
3. Is the Tenant entitled to recover the filing fee?

Preliminary Issue- Service of the Notice

The parties agreed the Landlord served the 2 Month Notice for Landlord's Use of Property by email on January 30, 2023 (the Notice). Tenant's advocate argued that the Notice was not properly served because the Tenant never provided their email address for service of documents. The parties have had previous conversations about the tenancy through email and that is how the Landlords knew the Tenant's email address.

The Tenant acknowledges receiving the Notice and disputed the Notice within the timeframe required. Additionally, the Tenant's advocate stated in their closing submissions that it was not material that the Tenant was evicted by email but that the eviction was done in bad faith.

The purpose of service is to ensure the tenant is aware of the Notice and since the Tenant has acknowledged receipt service is proven. I find that the Notice was properly served in accordance with the *Act*.

Facts and Analysis

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to relevant facts and information in this decision.

The parties confirmed the following details with respect to the tenancy:

- The tenancy started October 1, 2017.
- The current rent is \$1,100 and is due on the first of the month.
- A security deposit of \$600 was paid and is still retained by the Landlord.

Rent Increase

The Landlord GSJ and the Tenant mutually agreed to increase rent to \$1,100.00 per month starting June 1, 2022. The Tenant's advocate advised that the Tenant received text messages asking him to pay \$1,700.00 for rent only 6 months after the June 2022 rent increase. The Tenant offered to pay \$1,300.00 and even provided a rent cheque for January 2023 in that amount. The Landlords did not deposit the January rent cheque right away and instead asked the Tenant to pay \$1,500.00 per month. The parties both agree that despite the text messages discussing a higher amount of rent, rent has continued to be \$1,100.00.

GK testified that the Text Messages were not a notice of a rent increase and were an attempt to reach a mutual agreement with the Tenant regarding increasing rent. Additionally, rent has remained at \$1,100.00. I dismiss the Tenant's application for dispute of a rent increase because no rent increase has been imposed.

The Notice

I have been provided with a copy of the Notice and it was issued on the basis that the Landlord's son GJ and their wife would be occupying the rental unit. GJ testified that they currently live with their wife and their parents, who are the Landlords, upstairs of the rental unit, which has 4 bedrooms. GJ further testified that the reason they would like to occupy the rental unit is because they would like some separation from their parents, they are expecting a child and require their own space.

The Tenant's advocate argues there was an ulterior motive to the Notice and that it was not done in good faith. The Tenant's advocate points to text messages between December 2022 to January 2023, submitted into evidence, where the Landlords wanted to increase rent from \$1,100.00 to \$1,700.00 to support that there is an ulterior motive (the Text Messages). The Tenant's advocate also argued that it was only after the Tenant wouldn't agree to an increase in rent that the Notice was given.

Section 49 of the *Act* allows the Landlords to end the tenancy if a close family member intends, in good faith, to occupy the unit. Good faith means a landlord is acting honestly and intends to do what they say they are going to do (Policy Guideline 2A). It means there is no ulterior purpose for ending the tenancy. Typically, the courts have found that good faith requires honest intentions and no dishonest motive behind the notice to end tenancy.

Since the Tenant has raised an issue of dishonest motive or purpose for ending the tenancy, the onus is on the Landlords to establish good faith.

The contents of the Text Messages call into question the motive of the Notice. For example, in the text message from January 11, 2023 GJ said, "they wanted to meet you halfway to hopefully keep you with us". The wording used in this text message doesn't give the impression that the Landlords or GJ would be needing to occupy the rental unit, but rather supports that the Landlords wanted the tenancy to continue. Additionally, only 2 days after stating that the Landlords wanted to keep the Tenant, they decided the rental unit was needed for family member use.

Further, the Notice was given only 2 days after the Tenant did not agree to the rent increase. The timing of the Notice being given so soon after the negotiations around increasing rent calls into question the motive of the Notice.

GJ stated that once they found out they were expecting in November 2022 they always intended to occupy the rental unit they just didn't have a plan on when. GJ did not have any evidence that they had discussed a plan with their parents to occupy the rental unit, for example they didn't discuss when they would occupy the rental unit or who would cover the expenses. They have not showed me that they have taken any steps to implement this idea prior to the discussion with the Tenant about increasing rent. The vagueness in GJ's plan for occupying the rental unit supports a finding that this may not have been the true motives of the Landlords.

Based on a balance of probabilities and for the reasons outlined above, I find that the Landlords have not met their burden of proof to show that GJ intends to move into the rental unit in good faith. Accordingly, the Tenant's application to cancel the Landlords' Notice is granted. The tenancy continues until it is ended in accordance with the *Act*.

Filing Fee

Because the Tenant was only partially successful, I award only \$50.00 as reimbursement for the filing fee pursuant to section 72(1) of the *Act*.

Conclusion

The Tenant's application to cancel the Landlords' Notice is granted and the Notice is of no force or effect. The Tenant's application to dispute a rent increase is dismissed. Pursuant to section 72(2) of the *Act*, the Tenant can deduct \$50.00 from their next rent payment.

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 25, 2023

Residential Tenancy Branch