



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNL, FFT

Introduction

This hearing dealt with the Tenant's February 1, 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 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 recover the filing fee?

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 January 31, 2018.
- The current rent is \$1,400 and includes utilities.
- The rent is due on the first of the month.
- A security deposit of \$700 was paid and is still retained by the Landlord.

Is the Tenant entitled to an order cancelling the Notice?

The parties agreed the Landlord served the 2 Month Notice for Landlord's Use of Property by posting it to the door of the rental unit on January 31, 2023 (the Notice). I have been provided with a copy of the Notice and it was issued on the basis that the Landlord's son IS would be occupying the rental unit. Currently, the Landlord lives upstairs of the rental unit and has 3 bedrooms (the Upstairs).

The Landlord testified that their son, IS, needs to occupy the rental unit due to a family situation that has changed. When asked to provide further details about the family situation the Landlord stated they did not want to talk about it and that it was a personal matter. I informed the Landlord that the onus is on them to prove good faith and the purpose of the Notice. I also informed the Landlord that I can only base my decision on the information provided to me and that providing further details, if they felt comfortable, could better support their arguments.

I asked the Landlord where IS was living before and what happened with the previous living arrangements. The Landlord stated IS was living somewhere else and that IS needs to move into the rental unit because he has 2 children that he wants to have stay with him 2 or 3 days a week. I asked if the Landlord felt comfortable elaborating and the Landlord said no. The Landlord reiterated in her closing submissions that what happened to IS was personal and that they can't explain it any further.

The Tenant testified that in January 2023 they returned from vacation and received text messages, submitted into evidence, from the Landlord asking that they sign a new tenancy agreement because the utility bill was getting too high. Next, the Tenant pointed to a text message sent by the Landlord, January 25, 2023, where the Landlord stated, "Then if you are not agree with new agreement then there is a two months notice". Then another text message was sent to the Tenant where the Landlord states they can't afford to pay the utility bill and that if the utilities get disconnected the Tenant shouldn't be surprised if they are given notice to leave. Additionally, the Tenant argued that the Landlord only mentioned IS moving in after the Tenant would not agree to increase rent or sign a new agreement.

The Tenant does not believe that IS moving in is a genuine plan and further testified that IS comes over and stays Upstairs quite regularly already. The Tenant also mentioned that the rental unit has no working stove, so they believe it is unlikely IS will live in the rental unit.

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.

On January 25, 2023, the Landlord provided the Tenant with two options either sign a new agreement or be given a two-month notice, this suggests the Notice was being used as leverage rather than a good faith intention. The Landlord also mentioned the utilities being shut off and a notice being given, which suggests another tactic to get the Tenant to agree to a new agreement with increased rent. Additionally, the timing of the Notice being given so soon after the negotiations around increasing rent calls into question the motive of the Notice.

The Landlord has not provided compelling evidence to show that IS intends to move into the rental unit in good faith. Even if the Landlord had provided me with any convincing evidence, I find that the timing of the Notice being so close to the disagreement over increasing rent, supports on a balance of probabilities that there is an ulterior motive. Accordingly, the Tenant's application to cancel the Landlord's Notice is granted. The tenancy continues until it is ended in accordance with the *Act*.

Is the Tenant entitled to recover the filing fee?

Because the Tenant was successful, I award \$100.00 as reimbursement for the filing fee pursuant to section 72(1) of the *Act*.

Conclusion

The Tenant's application to cancel the Landlord's Notice is granted and the Notice is of no force or effect. Pursuant to section 72(2) of the *Act*, the Tenant can deduct \$100.00 from their next rent payment.

Page: 4

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 26, 2023

Residential Tenancy Branch