



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNL, MNDCT, DRI, OLC, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A hearing by telephone conference was held on May 30, 2023. The Tenant applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "*Act*").

Both parties were present at the hearing and provided affirmed testimony. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

Both parties confirmed receipt of each other's evidence, and the Landlord confirmed receipt of the Tenant's application and Notice of Hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Tenant applied for multiple remedies under the *Act*, some of which were not sufficiently related to one another.

Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues before me at the start of the hearing, I determined that the most pressing and related issues deal with whether or not the tenancy is ending. As a result, I exercised my discretion to dismiss all of the Tenants' application, with leave to reapply, with the exception of the following claim:

- to cancel the 2-Month Notice to End Tenancy for Landlord's Use of the Property (the Notice).

Issues(s) to be Decided

- Are the Tenants entitled to have the Landlord's Notice cancelled?
 - If not, is the Landlord entitled to an Order of Possession?

Background and Evidence

The Tenant acknowledged receiving the Notice on January 24, 2023. The Landlord issued the Notice for the following reason:

The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

-The Landlord or the Landlord's spouse

In the hearing, the Landlord was asked to explain why the Notice was issued, and he stated that he is currently living in Toronto, but is 67 years old and is retiring so he can be closer to family members in the lower mainland area. The Landlord stated that he plans on moving into this rental unit himself, and he denies that this Notice was issued in bad faith. The Landlord did not point to any documentary evidence to support his intentions and plans.

The Tenant stated that the Landlord has, for years, issued him illegal rent increases by pressuring him to pay more, or else the unit would be sold. The Tenant stated that he reluctantly paid these rent increases for years, but this last year, he decided enough was enough, and when he took issue with the rent increase, he was met with this Notice, which he feels is in bad faith, and retaliatory. The Tenants provided text messages and communications showing the issues over the years, and to support that this has been an ongoing matter.

The Landlord does not feel the increases were unlawful because the Tenant was ok with them at the time.

Analysis

Based on the evidence and testimony before me, I make the following findings:

In the matter before me, the Landlord has the onus to prove that the reason in the Notice is valid and that he intends in good faith to occupy the unit (as he has indicated on the 2-Month Notice).

I acknowledge that there has been degradation in the relationship between the Landlord and the Tenant. The Tenant is alleging that the Landlord has issued this 2-Month Notice in bad faith and it was issued because he took issue with a rent increase.

The burden of proof rests with the Landlord to demonstrate that he, in good faith intends to accomplish the stated purpose on the Notice. I note that Policy Guideline #2 states the following:

If the good faith intent of the landlord is called into question, the onus is on the landlord to establish that they truly intended to do what they said on the notice to end tenancy. The landlord must also establish that they do not have another purpose or an ulterior motive for ending the tenancy.

I have considered the testimony and the evidence on this matter, in totality, and I note that the Landlord, when asked to explain why the 2-Month Notice was issued, stated that he is retiring and plans to move to BC, from Ontario, in order to be closer to his family. However, he did not elaborate further on this matter, and I also note he has not provided any evidence to support that he is retiring, or that he plans on moving (third party witness statements, official documents, or flight details etc.)

After considering this matter, I note there is a history of questionable rent increases, and recently the Tenant took issue with this, and he was met with this Notice. I do not find the Landlord has provided sufficient evidence and testimony to establish his good faith intent, and that he, or his spouse will be moving in.

In this case, the onus is on the Landlord to substantiate the Notice and importantly, his good faith intentions. I find that the Landlord has not provided sufficient evidence to support his good faith intentions, especially given the issues surrounding rent increases.

Therefore, the Tenant's application is successful and the Notice received by the Tenant, is cancelled. I order the tenancy to continue until ended in accordance with the *Act*.

As the Tenant was successful with their application, I grant them the recovery of the filing fee against the Landlord. The Tenant may deduct the amount of \$100.00 from 1 (one) future rent payment.

Conclusion

The Tenant's application is successful. The Notice is cancelled.

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: June 2, 2023

Residential Tenancy Branch