



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNL, FFT

Introduction

This hearing dealt with a tenant's application for cancellation of a Two Month Notice to End Tenancy for Landlord's Use of Property ("Two Month Notice").

Both parties appeared and/or were represented at the hearing and the parties were affirmed.

I confirmed the tenant served and the landlord received the tenant's hearing materials and evidence. The landlords had not submitted any materials prior to the hearing and I confirmed the landlord intended to provide the landlord's evidence orally during the hearing.

The hearing process was explained to the parties and the parties were given the opportunity to ask questions about the process. Both parties had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

Issue(s) to be Decided

1. Should the Two Month Notice be upheld or cancelled?
2. Award of the filing fee.

Background and Evidence

The rental unit is a manufactured home located in a manufactured home park. The landlords are tenants of the manufactured home park and rent the manufactured home on the subject site to the tenant.

The tenant entered into a tenancy agreement with the former landlord 12.5 years ago. In December 2021 the current landlords acquired ownership of the manufactured home.

The tenant's current monthly rent obligation is \$750.00 payable on the first day of every month.

On January 31, 2023 the landlord issued the subject Two Month Notice. The Two Month Notice indicates the reason for ending the tenancy is so that the landlord or landlord's spouse may occupy the rental unit.

The landlord testified that the rental unit is not in a liveable condition currently. Extensive repairs need to be made including removal of drywall to make electrical repairs and repair water damage caused by a leaking roof. The landlords plan to make extensive repairs but need the unit to be vacant to do so. After the renovation is completed the landlord's ex-wife will occupy the rental unit.

The tenant agreed the rental unit is currently unliveable which is why she is staying in her vehicle parked in the driveway on the site. The tenant is of the position the landlords issued the Two Month Notice in bad faith as the parties have another dispute resolution proceeding concerning emergency repairs. The tenant believes the landlords may be selling the manufactured home or it may be expropriated for a TransLink project.

Analysis

Where a notice to end tenancy comes under dispute, the landlord bears the burden to prove the tenant was served with a valid notice to end tenancy and the tenancy should end for the reason(s) indicated on the notice.

The Two Month Notice before me was issued for a reason consistent with section 49(3) of the Act which provides that a tenancy may be ended with a Two month Notice where:

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit

To end a tenancy for landlord's use of property with a Two Month Notice requires that either the landlord or landlord's "close family member" intends to occupy the rental unit. Holding a unit vacant is devoid of a use and does not meet the criteria for ending a tenancy for landlord's use under section 49(3). Furthermore, a "close family member" is defined in section 49 of the Act to mean:

"close family member" means, in relation to an individual,

- (a) the individual's parent, spouse or child, or
- (b) the parent or child of that individual's spouse;

While a wife or common-law spouse would be considered a spouse, I am not satisfied that an ex-wife or ex-spouse is a "close family member" as use of the prefix "ex" implies the person is no longer a spouse.

The Act contemplates that a tenancy may be ended to obtain vacant possession to perform significant repairs or renovation, under section 49.2 of the Act. However, ending a tenancy under section 49.2 requires the landlord to make an application to the Residential Tenancy Branch after all necessary building permits or approvals have been obtained. If an Arbitrator grants the landlord's request to end the tenancy under section 49.2 of the Act, the tenant will be given at least four months of notice to vacate the rental unit. A landlord cannot circumvent the requirements of section 49.2 by serving the tenant with a Two Month Notice.

In light of the above, I find the landlords have not demonstrated a legal basis for ending the tenancy with the subject Two Month Notice and I grant the tenant's request that I cancel it.

Having cancelled the Two Month Notice, the tenancy continues at this time.

Since the tenant was successful in this application, I award the tenant recovery of the \$100.00 filing fee she paid for this application. I authorize the tenant to deduct \$100.00 from a subject month's rent to satisfy the award.

Conclusion

The Two Month Notice dated January 31, 2023 is cancelled and the tenancy continues at this time.

The tenant is authorized to deduct \$100.00 from a subject month's rent payment to recover 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 *Residential Tenancy Act*.

Dated: June 02, 2023

Residential Tenancy Branch