



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **CNL**

Introduction

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act (“the Act”) for orders as follows:

- cancellation of the landlord’s Two Month Notice to End Tenancy for the Landlord’s Use pursuant to section 49 of the Act

Both parties attended the hearing with the landlords FV and VL appearing with advocate CT. The tenant CF appeared.

The hearing was conducted by conference call. The parties were reminded to not record the hearing pursuant to Rule of Procedure 6.11. The parties were affirmed. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

The tenant confirmed receipt of the Two Month Notice to End Tenancy (“Two Month Notice”) dated January 28, 2023. The landlords confirmed receipt of the dispute notice and the tenant’s materials. Service for both parties complies with sections 88 and 89 of the Act.

Issue(s) to be Decided

1. Is the Two Month Notice valid and enforceable against the tenant? Is the landlord entitled to an order of possession?

Background and Evidence

The October 10, 2021 and is currently on a month to month basis. Rent is \$1,500.00 per month due on the first of the month. The landlords hold a security deposit of \$750.00 in trust for the tenant. The tenant still occupies the rental unit.

The landlords stated that they require the rental unit for their daughter. Landlord FV is getting older, his health is deteriorating and his daughter plans to move into the rental unit and spend time with her father. His daughter currently lives in another city.

The tenant testified that another tenant on the rental property had been served with a Two Month Notice for the same reason and for that reason he believes that the landlords are not acting in good faith and do not intend to use the property for the reason outlined in the Two Month Notice.

The landlords responded and advised that they have 6 children between them. They acknowledged that another child wished to move into the other rental unit and that was the reason for issuing another Two Month Notice to a different individual.

Analysis

RTB Rules of Procedure 6.6 states, "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." In this case, the landlord has the burden of proving the validity of the Two Month Notice served on the tenant.

The only documentary evidence provided was the Two Month Notice. The landlords assert that the rental unit will be used by their child. The landlord did not produce the child as a witness, or alternatively, a written statement by the child confirming she was moving in.

I have considered the tenant's position that the landlord is not intending to use the rental unit for the purpose stated in the Two Month Notice. In his submissions he stated that the evidence of this was the fact that the landlords served a Two Month Notice to a tenant in another rental unit. Serving multiple notices to tenants in a rental property for the same reason could be an indication that the landlords are not acting in good faith. In this case I am not prepared to consider that serving notices to different tenants is determinative that the landlords are not acting in good faith.

However, based on the lack of evidence from the landlords showing that they intend to put the rental unit to the use stated in the Two Month Notice, I find that the landlords

have not met their onus as required by the legislation to establish that they are acting in good faith and that they intend to use the rental unit for the purpose stated in the Two Month Notice.

The tenant's application is granted. The Two Month Notice is cancelled.

Conclusion

The Two Month Notice is cancelled. The tenancy shall continue until it is ended in accordance with the Act.

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 08, 2023

Residential Tenancy Branch