



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNL

Introduction

The hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Two Month Notice to End Tenancy for Landlord's Use.

The Tenant stated that on March 08, 2023 the Dispute Resolution Package was personally served to the Landlord. The Landlord acknowledged receiving these documents on March 08, 2023.

On March 05, 2023 the Tenant provided the Residential Tenancy Branch with a copy of the Two Month Notice to End Tenancy for Landlord's Use of Property. The Tenant was unable to clearly declare if/how this document was served to the Landlord. The Landlord stated that he was not served with a copy of this document, however he is in possession of it. As the Landlord is in possession of a copy of the Two Month Notice to End Tenancy for Landlord's Use of Property, I find it reasonable to accept it as evidence for these proceedings.

On June 02, 2023 the Tenant provided the Residential Tenancy Branch with a photograph. The Tenant stated that this photograph was personally served to the Landlord on June 02, 2023. The Landlord stated that he was not served with a copy of this photograph. I find that the Tenant has submitted insufficient evidence to establish that the photograph was served to the Landlord and I therefore decline to accept it as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Preliminary Matter

This hearing was scheduled to commence at 11:00 a.m. The Tenant was not present at the scheduled start time. The Assistant to the Tenant, hereinafter referred to as SG, stated that the Tenant is in transit and will be delayed by approximately 30 minutes.

The parties were advised that the hearing would be adjourned by 30 minutes to provide the Tenant with the opportunity to attend the hearing.

The hearing was reconvened at 11:30 a.m.

Issue(s) to be Decided

Should the Two Month Notice to End Tenancy for Landlord's Use be set aside?

Background and Evidence

The Landlord and the Tenant agree that:

- this tenancy began in April of 2018;
- the Landlord has a private suite in the residential complex, with his own bathroom and kitchen;
- the Tenant has a private room in the complex and shares the kitchen with other occupants who occupy the premises on the basis of separate tenancy agreements;
- on February 19, 2023 the Landlord personally served the Tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property, which declares the unit must be vacated by June 01, 2023 because it will be occupied by the Landlord's mother or father.

The Landlord stated that:

- he served the Two Month Notice to End Tenancy for Landlord's Use of Property because his mother intends to move into the unit;
- his mother currently lives in China;
- he submitted no documentary evidence to support his submission that his mother intends to move into the unit;
- he does not know when his mother intends to come to Canada, as he is awaiting the results of these proceedings before that decision is made;
- his mother has a “super visa” that allows her to stay in Canada for up to two years;
- his mother plans to remain in Canada for over two years, providing she can extend her “super visa”;
- when this Two Month Notice to End Tenancy for Landlord's Use of Property was served, there were no vacant rooms in the residential complex; and
- A room has vacated since he served the Two Month Notice to End Tenancy for Landlord's Use of Property, however the one occupied by the Tenant is more suitable for his mother.

The Tenant stated that:

- He thinks the unit he occupies is unsuitable for the Landlord's mother due to minor deficiencies with the room;
- He thinks the Landlord's mother will just visit for a short period, as she has previously done;
- He thinks the Landlord's mother would prefer to live in China, as it has better weather;
- The Landlord has previously increased the rent after evicting other tenants; and
- Other tenants were not served with a Two Month Notice to End Tenancy for Landlord's Use of Property.

Analysis

Section 49(3) of the *Act* stipulates, in part, that a landlord may end a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

On the basis of the undisputed evidence, I find that on February 19, 2023 the Landlord served the Tenant with notice of the Landlord's intent to end the tenancy pursuant to section 49(3) of the *Act*.

When a tenant disputes a Two Month Notice to End Tenancy for Landlord's Use of Property, the landlord bears the burden of proving that the landlord is ending the tenancy, in good faith, for the reason cited on the Two Month Notice to End Tenancy for Landlord's Use of Property. In these circumstances, the Landlord bears the burden of proving his mother intends to move into the rental unit.

I find that the Landlord has submitted insufficient evidence to establish that his mother intends to move into the rental unit. In reaching this conclusion, I was influenced by:

- The absence of any written documentation from the Landlord's mother, in which she declares her intent to reside in the unit for any period of time;
- The absence of any documents that support the Landlord's submission that his mother intends to travel to Canada, such as a plane ticket; and
- The absence of any documents that support the Landlord's submission that his mother is legally able to remain in Canada for any period of time, such as a visa.

As the Landlord has submitted insufficient evidence to establish that he has grounds to end this tenancy pursuant to section 49(3) of the *Act*, I grant the Tenant's application to cancel the Two Month Notice to End Tenancy for Landlord's Use of Property.

Conclusion

The Two Month Notice to End Tenancy for Landlord's Use of Property is set aside and has no force or effect. This 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 *Act*.

Dated: June 22, 2023

Residential Tenancy Branch