



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNL, FFT

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution, filed on March 13, 2023, wherein the Tenant sought an Order canceling a 2 Month Notice to End Tenancy for Landlord's Use issued on February 28, 2023 (the "Notice") and recovery of the filing fee.

The hearing of the Tenant's Application was scheduled for 11:00 a.m. on June 26, 2023. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties were cautioned that private recordings of the hearing were not permitted pursuant to *Rule 6.11* of the *Residential Tenancy Branch Rules*. Both parties confirmed their understanding of this requirement and further confirmed they were not making recordings of the hearing.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

This tenancy began May 1, 2017. Monthly rent is currently \$2,030.00. The Tenant paid a \$1,000.00 security deposit.

The Landlord issued the Notice on February 28, 2023. The effective date of the Notice was May 2, 2023. A copy of the Notice was provided in evidence before me. Both parties agreed that the second page of the Notice was not completed such that the reasons for ending the tenancy were not indicated.

The Landlord submitted that by issuing a 2 Month Notice to End Tenancy for Landlord's Use it was clear he intended to reside in the rental unit.

Analysis

A tenancy may end only in accordance with the *Act*. A Landlord may end a tenancy for their own use pursuant to section 49 of the *Act*. Section 49 provides in part as follows:

Landlord's notice: landlord's use of property

49 (1) In this section:

"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;

"family corporation" means a corporation in which all the voting shares are owned by

(a) one individual, or

(b) one individual plus one or more of that individual's brother, sister or close family members;

"landlord" means

(a)for the purposes of subsection (3), an individual who

(i)at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and

(ii)holds not less than 1/2 of the full reversionary interest, and

(b)for the purposes of subsection (4), a family corporation that

(i)at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and

(ii)holds not less than 1/2 of the full reversionary interest;

"purchaser", for the purposes of subsection (5), means a purchaser that has agreed to purchase at least 1/2 of the full reversionary interest in the rental unit.

(2)Subject to section 51 [*tenant's compensation: section 49 notice*], a landlord may end a tenancy

(a)for a purpose referred to in subsection (3), (4) or (5) by giving notice to end the tenancy effective on a date that must be

(i)not earlier than 2 months after the date the tenant receives the notice,

(ii)the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and

(iii)if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy, or

(b)for a purpose referred to in subsection (6) by giving notice to end the tenancy effective on a date that must be

(i)not earlier than 4 months after the date the tenant receives the notice,

(ii)the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and

(iii)if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

(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.

(4)A landlord that is a family corporation may end a tenancy in respect of a rental unit if a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

(5) A landlord may end a tenancy in respect of a rental unit if

- (a) the landlord enters into an agreement in good faith to sell the rental unit,
- (b) all the conditions on which the sale depends have been satisfied, and
- (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
 - (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;
 - (ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

(6) A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:

- (a) demolish the rental unit;
- (b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant;
- (c) convert the residential property to strata lots under the [Strata Property Act](#);
- (d) convert the residential property into a not for profit housing cooperative under the [Cooperative Association Act](#);
- (e) convert the rental unit for use by a caretaker, manager or superintendent of the residential property;
- (f) convert the rental unit to a non-residential use.

(7) A notice under this section must comply with section 52 [*form and content of notice to end tenancy*] and, in the case of a notice under subsection (5), must contain the name and address of the purchaser who asked the landlord to give the notice.

As provided in section 49(7) a notice to end tenancy issued by a Landlord must comply with section 52 of the *Act* which reads as follows:

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form

In this case, while the Landlord used the approved form (#RTB-32), the Landlord failed to complete the second page such that the grounds for ending the tenancy were not indicated. For clarity I include the following screenshot:

REASONS FOR THIS 2 MONTH NOTICE TO END THE TENANCY (put an "x" in all the boxes that apply)

<input type="checkbox"/> The rental unit will be occupied by the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse.
<input type="checkbox"/> A family corporation owns the rental unit and it will be occupied by an individual who owns, or whose close family members own, all the voting shares.
<input type="checkbox"/> All of the conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.
<input type="checkbox"/> The landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant.
<input type="checkbox"/> The landlord intends to convert the residential property to strata lots or a not-for-profit housing cooperative.
<input type="checkbox"/> The landlord intends to convert the rental unit for use by a caretaker, manager or superintendent of the residential property.
<input type="checkbox"/> The landlord has all necessary permits and approvals required by law to convert the rental unit to a non-residential use.
<input type="checkbox"/> The tenant no longer qualifies for the subsidized rental unit.

When a tenancy ends pursuant to section 49 of the *Act*, the landlord must use the property for the purpose stated on the notice; failing which a tenant may apply for 12 months rent pursuant to section 51(2) of the *Act*. The second page of the notice requires the landlord to specify the reason for ending the tenancy, such as occupation by themselves or a close family member, sale of the property etc. In this case the Landlord failed to include these essential details.

As the Notice fails to comply with section 52 I find it is ineffective. I therefore grant the Tenant's request to cancel the Notice. The tenancy shall continue until ended in accordance with the *Act*.

Having been successful in this application the Tenant is also granted recovery of the filing fee. He may reduce his next month's rent by \$100.00.

Conclusion

The Tenant's Application is granted.

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: July 11, 2023

Residential Tenancy Branch