



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes: Landlord: OPL FFL
Tenant: CNL

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- an Order of Possession for landlord’s own use pursuant to section 55; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant requested:

- cancellation of the landlord’s 2 Month Notice to End Tenancy for Landlord’s Use of Property (“2 Month Notice”), pursuant to section 49.

ST appeared for the landlord in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing by the attending parties. Both parties confirmed that they understood.

Both parties confirmed receipt of each other’s applications for dispute resolution hearing package (“Applications”) and evidence. In accordance with sections 88 and 89 of the *Act*, I find that both the landlords and tenant duly served with the Applications and evidence.

As the tenant confirmed receipt of the 2 Month Notice on February 28, 2023, I find that this document was duly served in accordance with section 88 of the *Act*.

Issues(s) to be Decided

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to an order for the landlord to comply with the Act?

Is the landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. the principal aspects of the applications and my findings around it are set out below.

This month-to-month tenancy began on June 1, 2016, with monthly rent is set at \$1,196,.00, payable on the first of the month. The landlord holds a security deposit of \$575.00.

The landlord served the tenant with a 2 Month Notice to End Tenancy for Landlord's use on February 28, 2023 providing the following reason:

- The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse.

ST testified that the rental home is owned by their 90 year old mother, and needs to end the tenancy for financial reasons. ST testified that they currently live with their mother in a larger home, and that their mother is in debt due to her growing needs, and is relying on a line of credit. ST testified that they would be moving out of their current home, which will then be rented out, and ST will be moving onto the rental property.

The tenant questioned the landlord's good faith in ending this tenancy. The tenant described a dispute over some damaged trees on the property, where the tenant was accused of causing the damage. The tenant testified that they have always been accused of causing plumbing issues in the home.

ST testified that the last two years have been difficult, and that the tenant had caused damage to the property. ST testified that the landlord simply fixed the damage to avoid conflict with the tenant. ST testified that there have been issues between the tenant and

the neighbours involving threats. ST testified that the tenant had also made threats towards them. ST testified that the tenant has a bad relationship with the renters next door, and that there have been concerns about safety.

ST testified that there has been a degradation over the last two years, and that there are safety concerns related to the tenant's conduct. ST testified that they have had to call the police numerous times, and that the matter with the police is still ongoing. ST testified that there has been a "veiled threat" towards them from the tenant, and that the tenant has threatened neighbours by stating that he is "going to put them down". ST testified that they have been informed not to attend at the rental property alone. ST testified that they have significant grounds to end the tenancy pursuant to a 1 Month Notice to End Tenancy for Cause, but has chosen not to.

ST testified that the landlord is not conflict oriented, and the only reason the landlord is terminating the tenancy is for financial reasons.

Analysis

Subsection 49(3) of the *Act* sets out that a landlord 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.

Residential Tenancy Policy Guideline 2: Good Faith Requirement When Ending a Tenancy states:

"If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy."

If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate that they do not have an ulterior motive for ending the tenancy."

Although the landlord stated that they had issued the 2 Month Notice for landlord's use, I find that the tenant had raised doubt as to the true intent of the landlord in issuing this

notice. The burden, therefore, shifts to the landlord to establish that they do not have any other purpose to ending this tenancy.

Although the landlord's son, ST, testified in the hearing and provided an explanation for why they need to move into the home, I find that ST's own testimony about the tenant raised questions about why the landlord was ending this tenancy. As ST stated in the hearing, ST has had to call the police numerous times about issues involving the tenant, and expressed concerns about the safety of others. Although ST testified that the landlord has opted to avoid serving the tenant with a 1 Month Notice because they wanted to avoid conflict, I find that evidence shows that the landlord has significant concerns about the tenant, which raises considerable doubt about ulterior motives for why they want to end this tenancy. Although the ST testified that they believe that they have sufficient grounds to end the tenancy pursuant to a 1 Month Notice, the merits of a hypothetical 1 Month Notice have not been proven.

Furthermore, as noted above, the onus is on the landlord to support the true reason for why they require the home for their own use. Although TF referenced financial issues, the landlord has not provided any documentation to support that the landlord or their family is truly in debt, or are having financial difficulties. Although I recognize that a party's financial information is private and confidential, I note that this not relieve the landlord from their obligations to support their case. I find that the landlord's testimony alone does not sufficiently support that they require this home for personal use due to financial reasons, especially given the fact that there are significant concerns about the tenant and possible illegal activity.

I find that the landlord has not met their burden of proof to show that they do not have any other purpose in ending this tenancy. I find that the testimony provided during the hearing raised considerable doubt as to the true motive for ending this tenancy, and the landlord has not provided sufficient evidence to show that the TF needs to move in for financial reasons.

Accordingly, I allow the tenant's application to cancel the 2 Month Notice dated February 28, 2023. This tenancy is to continue until ended in accordance with the *Act*, regulation, and tenancy agreement. I dismiss the landlord's entire application without leave to reapply.

Conclusion

The landlord's entire application is dismissed without leave to reapply.

The tenant's application to cancel the landlord's 2 Month Notice is allowed. The

Landlord's 2 Month Notice, dated February 28, 2023 is cancelled. This tenancy is to continue until 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: July 26, 2023

Residential Tenancy Branch