



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes: Landlords: OPL FFL
Tenants: CNL FFT

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 landlords 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 tenants 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;
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

At the outset of the hearing, the landlord GB clarified the spelling of their legal name. As neither party was opposed, GB’s name was amended to reflect the proper spelling of their name.

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”). In accordance with section 89 of the *Act*, I find both parties

duly served with each other's Applications. The tenants confirmed receipt of the landlord's evidentiary materials.

The landlords testified that they were not served with the tenants' evidence. As the landlords were not opposed, the tenant served the landlord's agent by way of email during the hearing with a copy of the three screenshots submitted to the RTB about a rent increase. The landlord confirmed that they did not take issue with the admittance of this evidence. As the other evidentiary materials were not served, they will be excluded for the purposes of this hearing.

As the tenants confirmed receipt of the 2 Month Notice on May 16, 2023, I find that this document was duly served in accordance with section 88 of the *Act*.

Issues(s) to be Decided

Should the landlords' 2 Month Notice be cancelled? If not, are the landlords entitled to an Order of Possession?

Are the parties entitled to recover their respective filing fees?

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 May 1, 2019, with monthly rent currently set at \$862.50, payable on the first of the month. The landlords hold a security deposit of \$425.00.

The landlords served the tenants with a 2 Month Notice to End Tenancy for Landlord's use on May 16, 2023, providing the following reason:

- The rental unit will be occupied by the landlord or close family member of the landlord or their spouse: the father or mother of the landlord or landlord's spouse.

The landlords submit that they wish to end this tenancy as the landlord's elderly father in law is suffering from a gradual decline in their health, and wishes to move into the property so the family may assist with their care and daily functions. The landlord's agent also noted that the move would assist with the betterment of the father in law's life

as it would provide a social benefit to live in closer proximity. The landlord's agent noted how the father in law's doctor made the recommendation that the aging father in law not live on their own anymore.

The landlords confirmed that there is another suite in the home, which has two bedrooms, and which would be too large for this purpose. A sworn affidavit from the father in law was submitted in evidence confirming their reasons for why they wish to move in.

The tenants dispute that the 2 Month Notice was issued in good faith. The tenants argued that the landlords had more than one suite in the home, including a garage that was previously converted into housing. The tenants argued that the father in law actually already lives in close proximity to the rental address, and notes that this 2 Month Notice was served after the tenants refused to pay an increase in rent. A copy of a text message was submitted in evidence discussing a possible rent increase of \$100.00 to \$150.00.

The landlord GB testified in the hearing that the rent increase conversation was in response to a decrease in the monthly rent, which was granted when two of the tenants' family members were out of the country and not residing in the suite. The landlord noted that no rent increases were imposed in a manner that contravened the legislation.

The landlord also disputes that the garage has been approved or used for occupancy by tenants, and testified that the garage is used for storage only. The landlord testified that the only other suite is the two bedroom suite.

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 landlords stated that they had issued the 2 Month Notice for landlord's use, I find that the tenants had raised doubt as to the true intent of the landlords in issuing this notice. The burden, therefore, shifts to the landlords to establish that they do not have any other purpose to ending this tenancy.

I find that the tenants raised considerable doubt as to why the landlords require the tenant's specific rental unit for their own use. Although the landlords did provide an explanation for why they require the home, the tenants submitted evidence which shows that the landlords were contemplating a rent increase of \$100.00 to \$150.00, which exceeds the standard allowable increase as per the legislation.

Although the landlords claim that this discussion was in response to a previous decrease in rent, I do not find this statement to be supported in evidence. Furthermore, although the landlords' explanation was that their elderly father in law required more assistance with their daily care and functions, the address of the home provided in the father in law's affidavit is for a home that is located only 170 meters away from the rental address, as confirmed by Google Maps. Considering the close proximity of the homes, I find that the landlords had failed to establish why this move is necessary. Furthermore, although the landlords' agent stated that the father in law's doctor had made a recommendation that the father in law not live alone in their home, the landlord did not submit any signed letters, or similar documentation, in evidence to support that this recommendation was made.

I find that the landlords have not met their burden of proof to show that they do not have any other purpose in ending this tenancy. I find that the tenants had raised considerable doubt as to the landlords' true intentions in ending this tenancy, especially considering the fact that the father in law already only lives 17 meters away from the residence.

For all these reasons, I allow the tenants' application to cancel the 2 Month Notice dated May 16, 2023. This tenancy is to continue until ended in accordance with the Act,

regulation, and tenancy agreement. I dismiss the landlords' entire application without leave to reapply.

As the tenants' application had merit, I allow the tenants to recover the filing fee.

Conclusion

The landlords' application is dismissed without leave to reapply.

The tenant's application to cancel the landlords' 2 Month Notice is allowed. The Landlord's 2 Month Notice, dated May 16, 2023 is cancelled and of no force or effect. This tenancy is to continue until ended in accordance with the *Act*.

I allow the tenants to implement a monetary award of \$100.00 for the recovery of the filing fee, by reducing a future monthly rent payment by that amount. In the event that this is not a feasible way to implement this award, the tenants are provided with a Monetary Order in the amount of \$100.00, and the landlords must be served with **this Order** as soon as possible. Should the landlords fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: September 15, 2023

Residential Tenancy Branch