



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a Two Month Notice to End Tenancy For Landlord's Use of Property.

The tenant and the landlord attended the hearing, and the landlord was represented at the hearing by an agent, and assisted by his son to interpret. The landlord's son was affirmed to well and truly interpret the hearing from the English language to the landlord's Native language and from the landlord's Native language to the English language to the best of his skill and ability. The landlord's agent and the tenant each gave affirmed testimony, and the tenant called 2 witnesses who also gave affirmed testimony. The parties were given the opportunity to question each other and the witnesses, and to give submissions.

The parties agree that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Has the landlord established that the Two Month Notice to End Tenancy For Landlord's Use of Property was given in accordance with the *Residential Tenancy Act* and in good faith?

Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on November 1, 2018 and the tenant still resides in the rental unit. Rent in the amount of \$2,200.00 is payable on the 1st day of each month and there are no rental arrears. A security deposit

in the amount of \$900.00 was collected by the landlord which was carried over from a previous owner of the rental unit, which is still held in trust by the current landlord, and no pet damage deposit was collected. The rental unit is the main floor of a house, and the lower level is also tenanted. The landlord does not reside on the property, but on an adjacent property next door. A copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord's agent further testified that on June 21, 2023 the tenant was personally served with a Two Month Notice to End Tenancy For Landlord's Use of Property and a copy has been provided for this hearing. It is dated June 21, 2023 and contains an effective date of vacancy of August 31, 2023. The reason for issuing it states: The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse), specifying the father or mother of the landlord or landlord's spouse.

The landlord and wife and son, and father currently live next door. The landlord's current residence does not facilitate the medical assistance that the landlord's father requires. The landlord's father suffers from multiple issues and requires 24 hour care. The landlord's residence has very limited space and is not conducive to privacy, with constant family members coming by to see his condition. It is very open and visible space. Noise travels and causes uneasiness to the family and the landlord decided to consider alternate space.

After much discussion by family members, it was decided that the rental unit will be useful for medical equipment, accessibility to the suite and a bathroom with privacy. The main bedroom would have its own bathroom and would provide more space for the medical equipment and separate area for treatment, as well a sleeping space and storage for overnight care givers and an easier process. There is no other purpose.

The landlord's current home has an upstairs, main floor area, family room and bathroom. The basement in the landlord's home is also rented. The landlord's agent does not know how many bedrooms are in the rental unit or in the basement suite of the landlord's home. The landlord does not intend to remove other tenants from the other unit of the rental home.

The tenant testified that the photographs provided for this hearing show the story. There are holes in the fences and a large staircase which is difficult to climb. It is next to the landlord's house, which is a 5 year old large home. The photographs also show stairs into the kitchen and an entrance to the kitchen in the rental unit, which will be a problem for the landlord's father if mobility is an issue. One of the photographs is of the front step, which

has to be navigated and only has 1 railing, which makes it tricky to get in and out of. The tenant has experienced that after hip surgery.

The toilet, which the landlord says will be good for his father is very small and photographs have been provided. It's a tiny bathroom with a pocket door. It is quite isolated from the rest of the house and the landlord's father would have to go upstairs to get to it; it's the ensuite.

There was a steady stream every day of people caring for the landlord's father, but that has stopped entirely. The tenant has been told twice that he is dying, and the tenant believes the landlord's father is currently in hospital. The landlord's father used to live with the landlord's brother.

There have been non-stop rodent problems in the rental unit and an infestation of ants on the stove. The landlord has been providing poison and mouse traps to the tenant.

The landlord gave a request to the tenant to increase the rent, and a copy has been provided for this hearing. The landlord also gave the tenant a list of expenses that the landlord wants the tenant to start paying for, 2 months after the tenant paid an increase to \$2,422.50 per month, effective November, 2022, which was the maximum allowed by law. Then the landlord gave the tenant another list asking for another \$44.00 per month, being \$11.00 each for 4 people who share the rental home, which was given 2 months later. Now the dryer has a pay machine on it, and the first list given by the landlord indicates \$.50 per load.

The rental unit was an ugly mess, and the tenant borrowed equipment to power wash, and has provided a list of things that the tenant has done. The landlord has watched the tenant, and knows it's true.

The previous owner was directed by the current landlord to get everyone to move out or it would not be sold. By screaming at people, the 2 suites in the lower level moved out. The tenant was screamed at as well to move out by the previous owner who said that the landlord wouldn't buy it. The screaming was horrible, and the previous landlord offered the tenant \$50,000.00 to get out.

Just before the landlord purchased the rental home a notice to end the tenancy was issued and the tenant applied to have it cancelled. The Arbitrator found that there were 2 empty suites in the house because he had chased others out and claimed that family needed a place to live, so that Notice was cancelled.

The tenants started to get the landlord's mail 2 ½ months before he took possession of the rental home.

The tenant's first witness (JT) testified that the witness has been a resident of the rental unit for 5 or 6 years and has 3 roommates.

The tenants were told loudly by the previous landlord that the tenants all had to move out or he wouldn't be able to sell, and both basement suite tenants moved out.

The witness also testified that the tenants received an envelope with a note asking for an additional \$44.00 per month.

The tenant's second witness (AE) testified that the landlord lives next door and the tenants have been receiving the landlord's mail prior to knowing who he was. The previous landlord said he wanted to move his sister or children into the rental unit. He also told the tenants and the tenants in the lower level that he wanted an empty house, and that someone wanted the tenants to move out. He also offered \$50,000.00. He couldn't sell with tenants residing in the rental home and that the current landlord didn't want a garden.

The witness also testified that the witness wants to know if the landlord is going to turn the furnace back on.

The witness has seen the landlord's photographs, and questions the photograph of the bathroom with no privacy; why does he not close the door.

The list of contributions made by the tenant is true, and after a hip transplant the witness had to carry stuff for the tenant, who is very athletic in swimming and water polo.

The witness has been living in the rental unit for 10 years, and has heard from the landlord that his father would live in the rental unit. However to leave his wife in the new, big house and for the landlord to stay in the rental unit with his father is not believable.

SUBMISSIONS OF THE LANDLORD'S AGENT:

What was said by the prior landlord has no indication to this Notice. The landlord is aware that the rental unit is a less nice property, but the landlord is looking for practicality. The landlord does not intend to move in, only his father and other family members and care providers assisting. Work may need to be done, but the landlord needs the property for the whole family dynamic.

SUBMISSIONS OF THE TENANT:

A trail of caregivers has dried up. The standard has not been met and the Notice is completely dishonest. Stairs and an ensuite bathroom makes no sense at all for the landlord's father, and the tenant is sure the landlord will use it for an Air BNB. There has never been an answer from the landlord about why his father doesn't live with the landlord's brother as he did before.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. Also, in the case of a Two Month Notice to End Tenancy For Landlord's Use of Property (the Notice) the onus is on the landlord to establish good faith intent to use the rental unit for the purpose contained in the Notice commencing within a reasonable time after the effective date in the Notice and for at least 6 months duration.

I have reviewed all of the evidence of the parties, and note that the landlord, after increasing rent contrary to the law, also gave the tenants a list of more expenses. That is not lawful.

Considering the photographs, the illegal rent increases, and the notes about further expenses, I am not satisfied that the landlord has acted in good faith, but has carried on with a money grab from the tenants that the landlord is not entitled to. I do not believe that the landlord has any intention of moving his ill father, who requires constant care into the rental unit. Therefore, I cancel the Two Month Notice to End Tenancy For Landlord's Use of Property and the tenancy continues until it has ended in accordance with the law.

The *Residential Tenancy Act* also gives me the authority to make any order that I find are relevant to the application, including an order that the landlord comply with the *Act*, regulation or tenancy agreement. I hereby order that the lists of expenses given by the landlord, including the additional \$44.00 per month are not lawful and the tenants are not required to pay any of it.

I further order the landlord to turn the heat back on for the tenants immediately.

I have also reviewed the tenancy agreement which shows that laundry is free. I order the landlord to remove the pay dryer immediately and return the dryer to the unpaid dryer or a new unpaid dryer.

I further order that the landlord may not increase rent unless the landlord has given a Notice of Rent Increase in the approved form no less than 3 months before the increase takes effect, and the tenants are at liberty to apply for dispute resolution to recoup the overpayments of rent.

Conclusion

For the reasons set out above, the Two Month Notice to End Tenancy For Landlord's Use of Property dated June 21, 2023 is hereby cancelled and the tenancy continues until it has ended in accordance with the law.

I further order the landlord to comply with the *Residential Tenancy Act* by refraining from giving the tenants lists of further expenses.

I further order the landlord to refrain from increasing rent except in the approved form given no less than 3 months before the increase takes effect, and the tenants are at liberty to apply for compensation for overpayments made to the landlord.

I further order the landlord to turn the heat back on in the rental unit immediately.

I further order the landlord to return the dryer to a non-coin operated appliance immediately.

This order is final and binding and may be enforced.

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: November 02, 2023

Residential Tenancy Branch