

DECISION

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution under the *Residential Tenancy Act* (the "Act") for:

- cancellation of the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (Two Month Notice) under section 49 of the Act
- authorization to recover the filing fee for this application from the Landlord under section 72 of the Act

The Landlord filed a cross-application under the Act for an order of possession based on the same Two Month Notice, which will be considered at the same time.

Issues to be Determined

Does the Two Month Notice end the tenancy?

Is the Tenant entitled to recover their filing fee?

Facts and Analysis

Evidence was provided showing this tenancy began on July 1, 2007, with a security deposit of \$375.00. The current monthly rent is \$858.84 due on the first day of each month.

The Landlord issued a Two Month Notice on September 30, 2023, requiring the Tenant to vacate by November 30, 2023, so that the child of the Landlord could occupy the rental unit.

Does the Two Month Notice end the tenancy?

I find the Two Month Notice complies with section 52 of the Act, and the Tenant disputed the Two Month Notice within the required time. So, the Landlord has the burden to prove that they have sufficient grounds to issue the Two Month Notice under section 49 of the Act, so that their child may occupy the rental unit.

The Landlord says their child currently lives at home with them and they are going to school in an area 20 minutes away from the rental unit. The child is in their second year

of post secondary education, and this year their basketball practice sessions have been scheduled at 6:45am two times per week.

The Landlord says they became aware of the basketball schedule sometime around September 15, 2023, and by the end of September, their child found commuting to school for that time of day to be too difficult. The distance from the Landlord's residence to the school is about 45 minutes, and longer depending on traffic conditions.

The Landlord's in-laws live around 20 minutes away from the school and the child has been staying there at times. One other set of relatives also lives near the school, but the child has not stayed with them.

The Landlord says they want to encourage their child's independence and provide a place for them to stay near to the school when they have long breaks between classes.

The Landlord is an owner of the rental building where the Tenant's unit is located. There are approximately 20 rental units in the building. Only two of the units are two-bedroom units, while the rest, including the Tenant's unit, are one-bedroom units.

The Landlord acknowledges they chose to serve the Two Month Notice to this Tenant because their unit generates low rental income at the current rate. The Landlord says it is a nice unit and it is the unit chosen by their child. The Landlord says there are currently no other vacant units in the rental building.

The Tenant says there is a relatively high turnover of units in the building and the Landlord should be able to wait for another unit to become available rather than forcing the Tenant to vacate. The Tenant disputes that the Notice is being issued in good faith.

Policy Guideline 2A says a landlord must demonstrate there is not an ulterior motive for ending the tenancy, and the Two Month Notice must be issued in "good faith". Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant; they do not have an ulterior motive for ending the tenancy, and they are not trying to avoid obligations under the Act or the tenancy agreement.

The Tenant believes this is a "renoviction" and says the Landlord has tried to evict them on multiple other occasions over the last few years. The Tenant says they report the Landlord for any breaches of bylaws or otherwise and the Landlord is aware of this.

The Tenant testified that the Landlord has a history of non-compliance with bylaws, regulations, city inspections, and notices to end tenancy. The Tenant says the Landlord previously asked to increase their rent by more than 35%. The Tenant Testified that a neighbor was evicted so that a caretaker or manager could occupy their suite and instead the Landlord renovated and re-rented that unit to a new occupant who is not a caretaker or manager. The Landlord did not dispute this.

The Tenant says a unit in their building was available for rent on August 1, 2023, and the Landlord's child could have moved into that unit prior to serving the Two Month

Notice to the Tenant on September 30, 2023. The Tenant says another neighboring unit was rented to new tenants beginning October 1, 2023, and the Tenant questions why the Landlord's child was not offered that unit. The Landlord says they had not decided for their child to move into the rental building in time to make use of those units.

According to Policy Guideline 2A, if the Landlord has ended tenancies in the past to occupy a rental unit without occupying it for at least 6 months or if there are comparable vacant rental units in the property that the landlord could occupy, this may indicate the Landlord is not acting in good faith.

I find the Tenant has presented compelling testimony that the Landlord has previously ended a tenancy for a caretaker to occupy a rental unit and instead renovated and re-rented that unit.

I accept the Tenant's testimony that rental units become available in the rental building often enough that the Landlord's child could occupy any of those units when they become available.

I find the Landlord has acknowledged that they have chosen the Tenant's unit in particular because of the low rate of rent charged for this unit. I find this is an ulterior motive for ending the tenancy.

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find the Landlord has failed to prove that they have issued the Two Month Notice to the Tenant in good faith.

Therefore, I grant the Tenant's application to cancel the Two Month Notice issued September 30, 2023, under section 49 of the Act.

This tenancy continues until it is ended in accordance with the Act.

Is the Tenant entitled to recover their filing fee?

As the Tenant was successful in their application, I find they are entitled to recover the \$100.00 filing fee paid for this application under section 72 of the Act.

I authorize the Tenant to deduct \$100.00 from one future rent payment in full satisfaction of this award.

Conclusion

I grant the Tenant's application to cancel the Two Month Notice issued September 30, 2023, under section 49 of the Act.

The Two Month Notice issued September 30, 2023, is cancelled and is of no force.

This tenancy continues until it is ended in accordance with the Act.

I authorize the Tenant to deduct \$100.00 from one future rent payment in full satisfaction of their filing fee for this application.

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: January 18, 2024

Residential Tenancy Branch