



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL
 OPL, FFL

Introduction

This hearing was convened by way of conference call concerning applications made by the tenants and by the landlord. The tenants have applied for an order cancelling a notice to end the tenancy for landlord's use of property. The landlord has applied for an Order of Possession for landlord's use of property and to recover the filing fee from the tenants for the cost of the application.

One of the tenants attended the hearing and represented the other tenant. The landlord also attended with Legal Counsel who was also permitted to interpret for the landlord. The parties each gave affirmed testimony and the landlord called 1 witness who also gave affirmed testimony. The parties were given the opportunity to question each other and the witness.

During the course of the hearing the landlord's Legal Counsel indicated that the tenants' evidentiary material was not received by the landlord. The tenant did not dispute that. Any evidence that a party wishes me to consider must be provided to the other party. Since the tenants have not provided evidence to the landlord, none of the tenants' evidence 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 testified that this month-to-month tenancy began about 16 years ago and the tenants still reside in the rental unit. There is no written tenancy agreement however rent in the amount of \$700.00 is payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$225.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a basement suite. There are 3 suites: the tenants' basement suite, the landlord resides in one suite, and the other is currently rented to students.

The landlord further testified that the tenants were served with a Two Month Notice to End Tenancy for Landlord's Use of Property and a copy has been provided as evidence for this hearing. It is dated August 30, 2021 and contains an effective date of vacancy of November 1, 2021. 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 child of the landlord or landlord's spouse.

Another "Revised" Two Month Notice to End Tenancy for Landlord's Use of Property has been provided for this hearing. It is dated October 6, 2021 and contains an effective date of vacancy of November 1, 2021. The reason for issuing it is the same as the first Notice. The landlord does not know when either of the Notices was served. The "Revised" version was issued to remind the tenants to move out.

The landlord's 30 year old son will be moving into the rental unit. Prior to serving the Notice the landlord told the tenants that the landlord's son would be moving in, but the tenants said they didn't want to move and refused. Currently there are 6 people living in the landlord's 4 bedroom living space, and some sleep on the floor. If the landlord's son moves out it will create more space for the others. The rental unit is 1 bedroom suite accessible from the landlord's living space; the other unit is a bachelor suite and is too small for the landlord's son.

The landlord offered the tenants the other unit, which was rented for October 1, 2021 for \$800.00 per month, but the tenants said it was not suitable and too small. The tenants indicated that they were going to move into it but then refused.

The landlord has also provided a copy of an agreement entered into by the parties, signed by both tenants and a witness, and testified that the landlord's son gave the document to the tenants and brought it back to the landlord, and there was no prior

communication about it. The tenants received the paper and signed it. The document states that the tenants agree to withdraw this Notice of Dispute Resolution Proceeding and will provide proof of that to the landlord. It also states that the tenants consent to the landlord's application, specifically an Order of Possession in favour of the landlord and recovery of the filing fee.

The landlord has not yet provided the tenants with compensation as required, and does not know of any consequences if the landlord fails to accomplish the stated purpose in the Notice or that any compensation is required by law.

The landlord was questioned, but denied requiring the tenants to take in another tenant for an additional \$400.00 per month rent payable to the landlord. The landlord testified that the tenant had asked if the other person could move in so that rent would be paid.

The landlord's witness is the landlord's son and testified that he now lives with his mother as well as his dad, an aunt and 2 sisters. The witness is finishing school now and will be moving downstairs. The witness wants to move to the rental unit; it connects to the upstairs where the landlord and the other family members reside.

The witness served the Notices to end the tenancy, the first one in person over the summer or in September. The witness believes it was served in person by himself and the landlord. On October 6 they stuck it on the door. The witness' cousin was also there. Later, another was given in December in person and the witness' cousin was present.

During cross examination the witness testified that the first Notice was served by giving copies for both tenants to the male tenant on August 30, 2021. On October 6 the witness served the revised Notice by taping it to the door. The witness knocked but received no answer. It was issued because the first one was written wrong; the name of the tenant was apparently a nick-name, so the Notice was revised to correct the names.

The witness does not know when the other suite was rented and doesn't pay attention. The witness does not want the smaller unit because it is blocked off and to access the landlord's residence the witness would have to go outside. It also has access to the laundry area.

The tenant testified that the tenants are a low-income family and the tenant suffered from a prior car accident. The tenant also has asthma and COVID exposure would be a trip to the hospital. The tenant's wife is a health care worker and has worked through this pandemic.

There have been constant harassments by the landlord for the tenants to move out of the rental unit. First the landlord asked the tenants to move out verbally saying that the landlord needed more money when COVID started, but the tenants said, "No." That was in December, 2019. Then the landlord asked the tenants to take in another tenant who moved in on January 1, 2020. The tenants were scared, and the other person paid an additional \$400.00 per month to the landlord. That person stayed until March, 2021. Then, the day that person moved out, the landlord told the tenants to move out, which was on March 1, 2021, during the pandemic lockdown, but did not serve any notice to end the tenancy, and the tenants refused to move out. The landlord's brother told the tenants to move out and said that the landlord wants more money and could get more money if the tenants moved out. That was in July, 2020.

The tenant further testified that the landlord waited until October 1, 2021 to serve the Two Month Notice to End Tenancy for Landlord's Use of Property, which was the same day that 2 other tenants moved into the bachelor suite in the rental home.

The tenants received 4 notices to end the tenancy. Two are amended versions, because the first one had the tenants' names wrong.

The tenants have been in the rental unit for 16 years, since 2005.

The tenant signed the consent as an attempt at dispute resolution without a hearing, and believed it was in good faith. The consent included another document stating that the tenants would be required to pay more money for inconvenience to the landlord, and to give the landlord more rent money until the tenants could find a place. The tenant testified that the agreement included the landlord withdrawing the landlord's application. The tenants also agreed to work on finding a new place, and the consent was supposed to be only if the tenants cancelled this hearing, but was not intended to be an agreement to move out, and the intent was misleading.

The tenants found another rental unit, and asked the landlord for money to move out, but the landlord only wanted to pay about \$500.00 and not the security deposit. Someone else rented it before the tenants had the money. If it had been available to the tenants, they would have moved into it. The tenants continue to look, but have not found any in their price range.

The tenants do not agree to move out, and disputes that the landlord's son will move into the rental unit. The whole story of behaviors of the landlord show that it's about more money. The back suite was available to the landlord's son, and it has 3 girls living

in it now. The rental unit and the other suite all have access to the same hallway to the house and laundry area. The fire door to that suite is totally available.

The tenant further testified that the landlord offered the bachelor suite to the tenants to live in for more rent money than currently payable, and told the tenants that they would have to throw away 80% of their possessions. The tenants are grandparents, and their belongings will not fit in that suite. It is smaller and not suitable for a couple.

The tenant has never seen the landlord's son with a partner or any interest in living in the rental unit. It seems to be a renovation and underhanded. The tenants can't use a bedroom because the tenant that had been taken in at the landlord's actions destroyed it. It's never been painted or upgraded. The tenant understands that the landlord has money problems, but so do the tenants.

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. Further, in the case of a Two Month Notice to End Tenancy for Landlord's Use of Property, the landlord must demonstrate good faith intent to use the rental unit for the purpose contained in that Notice.

The landlord has issued 4 of the Notices, 2 being addressed to people who are not tenants. The other 2 are addressed to the tenants in this case. I do not accept the submission of the landlord's Legal Counsel that the 2nd Notice was procedural only. The *Act* specifies that the Notice must be in the approved form. The approved form requires the tenants' name, and to include another name that is not a tenant residing on the rental property is not giving notice to the tenant that the landlord has a tenancy agreement with. However, the landlord served 2 more Notices, in the approved form, which I find do comply with the *Act*, except that the effective date of vacancy is changed to the nearest date that complies with the *Act*. The landlord's son testified that it was served by taping it to the door of the rental unit on October 6, 2021, and therefore, the effective date of vacancy is changed to December 31, 2021.

I also refer to Residential Tenancy Policy Guideline 2A: Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member, which states, in part:

“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 purpose for ending the tenancy, and they are not trying to avoid obligations under the RTA or the tenancy agreement.”

“If there are comparable vacant rental units in the property that the landlord could occupy, this may suggest the landlord is not acting in good faith.”

I have reviewed all of the evidence of the landlord, and I have considered the testimony of the parties and of the landlord’s witness. The agreement provided by the landlord states that the tenants agree to withdraw the application for this hearing and to provide proof of that to the landlord. The tenant testified that there was a further agreement wherein the tenants agreed to pay more rent to the landlord and the landlord would withdraw the application for an Order of Possession, at least until the tenants could find an alternate rental unit that they could afford. The landlord did not dispute that, and I accept that testimony, and I find that the consent provided by the landlord is not entirely what was agreed to.

In considering the good faith requirement, this was a difficult hearing, and the testimony of the tenant that I find significant is that in December 2019 the landlord asked the tenants verbally to move out because the landlord wanted more money. In July, 2020 the landlord’s brother told the tenant that the landlord could get more money if the tenants moved out. The parties disagree on another person moving in with the tenants, in January, 2020, however on March 1, 2021, the day that the other person moved out, the landlord told the tenants to move out again during the pandemic lockdown without serving a notice to end the tenancy.

The first notice to end the tenancy is null and void because it does not name the tenants. The tenants’ position is that the landlord waited until October 1, 2021 to serve the second Notice, which was the same day that 2 other tenants moved into the bachelor suite in the rental home. Neither the tenants nor the landlord’s son wanted or want to occupy the smaller suite, and perhaps the landlord felt that renting the smaller suite to the tenants for the amount of rent they pay now would afford the landlord the opportunity to re-rent the rental unit for a higher amount. But there is nothing to support that theory.

Neither the landlord nor the landlord’s son, who doesn’t pay any attention to what goes on with the rentals, have any knowledge of compensation required or any consequences. However, the landlord’s son is 30 years old and wants to move to the rental unit, which will make more space for the rest of the family in the landlord’s home. I find that to be acceptable.

The tenants' application is dismissed.

Having found that the Two Month Notice to End Tenancy for Landlord's Use of Property dated October 6, 2021 is in the approved form, I grant an Order of Possession in favour of the landlord. Since the changed effective date of vacancy, December 31, 2021 has passed, I grant the Order of Possession effective on 2 days notice to the tenants.

Since the landlord has been successful with the application the landlord is also entitled to recovery of the \$100.00 filing fee, and I grant a monetary order in favour of the landlord as against the tenants in that amount.

Conclusion

For the reasons set out above, the tenants' application is hereby dismissed.

I hereby grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenants.

I further grant a monetary order in favour of the landlord as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00.

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: January 31, 2022

Residential Tenancy Branch