



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a residential tenancy dispute. The tenant applied on April 30, 2022 for an order to cancel a Two Month Notice for Landlord's Use, dated April 15, 2022 (the Two Month Notice);

Attending the hearing were the tenant and the two landlords. The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The landlords confirmed they received the tenant's materials and had not submitted or served any responsive evidence.

Issues to be Decided

- 1) Is the tenant entitled to an order cancelling the Two Month Notice?
- 2) If not, are the landlords entitled to an order of possession?

Background and Evidence

The parties agreed on the following particulars of the tenancy. It began on November 1, 2015; rent is \$600.00, due on the first of the month, and the tenant paid a security deposit of \$250.00, which the landlords still hold.

The parties agreed that the subject rental unit is the first floor of a duplex, and that the tenant shares a living area and kitchen with other tenants.

The landlords testified they served the four-page Two Month Notice on the tenant by posting it to the door on April 16, 2022, and the Tenant testified he received it the same day.

The Two Month Notice is signed and dated by the landlord, gives the address of the rental unit, states the effective date of the Notice, states the grounds for the Notice, and is in the approved form. The Two Month Notice indicates two reasons the tenancy is ending: because the landlord or the landlord's spouse will occupy the unit, and because the child of the landlord or landlord's spouse will occupy the unit.

The landlords testified that they want to move back into their own property because the 2-bedroom apartment they now live in with their son is very small, and they need more space as their son is growing up. Landlord LY testified that the rental is close to her work, so commuting would be convenient. The landlords testified they intend to occupy the whole 4-bedroom townhouse, and have wanted to since June 30, 2022, the effective date of the Two Month Notice.

The tenant testified that on April 5, 2022, a man and a woman came to the townhouse, and the tenant heard landlord LY tell them the townhouse is only for rentals, and that the landlords have never lived there, but have been renting out the rooms for 20 years.

Landlord LY testified that the tenant misheard or misinterpreted the conversation he overheard; the landlord submitted she has several rental properties, and had been telling the visitors that, in general, she has been renting out units for 20 years. The landlord submitted she had not been referring specifically to the townhouse.

The tenant testified he did not believe the landlords intended to move into the townhouse.

Analysis

Based on the testimony of the parties, I find the landlords served the Two Month Notice on the tenant by posting it to the door on April 16, 2022, and that the tenant received it the same day. I find the landlords served the tenant in accordance with section 88 of the Act, and that the Two Month Notice meets the form and content requirements of section 52.

The standard of proof in a dispute resolution is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

As described in Residential Tenancy Branch Rule of Procedure 6.6, when a tenant applies to dispute a notice to end tenancy, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice is based. And, as noted in Residential Tenancy Policy Guideline 2A: *Ending a Tenancy for Occupancy by Landlord, Purchaser, or Close Family Member*, when the issue of a dishonest motive or purpose for ending the tenancy is raised by a tenant, the onus is on the landlord to establish they are acting in good faith.

Policy Guideline 2A explains that 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 Act or the tenancy agreement.

The landlords have testified they wish to move back into the rental unit as they now need more space as their son grows up.

The tenant has testified that they do not believe that the landlords intend to move into the rental unit, based on the tenant's understanding from other tenants that the landlords have never lived in the unit, and because he overheard one of the landlords stating that the townhouse is just for rental income and that the landlords have never lived in it.

The landlords testified that the tenant did not correctly hear or understand the conversation he overheard.

In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

As previously established, in this case the onus is on the landlords. However, other than stating why they wish to move into the unit, the landlords have not provided any additional evidence to support their claim, such as witness testimony or documentary evidence.

This lack of supporting evidence calls into question the landlord's claim they will move into the rental unit, and that they are acting in good faith.

Taking into careful consideration all the evidence presented, and applying the law to the facts, I find on a balance of probabilities that the landlords have not met the onus of proving the reason for the Two Month Notice, nor that they are acting in good faith.

Conclusion

The tenant's application is granted.

The Two Month Notice for Landlord's Use is cancelled; the tenancy will continue until it is 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: September 06, 2022

Residential Tenancy Branch