Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, DRI-ARI-C, OLC, FFT

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a residential tenancy dispute. On September 26, 2022 the tenants applied for:

- an order to cancel a Two Month Notice for Landlord's Use, dated September 12, 2022 (the Two Month Notice);
- dispute of an additional rent increase for capital expenditures;
- an order for the landlord to comply with the Act, Regulation, and/or the tenancy agreement; and
- the filing fee.

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.

Neither party raised an issue regarding service of the hearing materials.

Preliminary Matter

The Residential Tenancy Branch Rules of Procedure 2.3 states:

> **2.3 Related issues** Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As they are not related to the central issue of whether the tenancy will continue, I dismiss, with leave to reapply, the tenants' claims to dispute an additional rent increase,

and for an order for the landlord to comply with the Act, Regulation, and/or tenancy agreement.

Issues to be Decided

1) Are the tenants entitled to an order cancelling the Two Month Notice?
2) If not, are the landlords entitled to an order of possession?
3) Are the tenants entitled to the filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties agreed on the following particulars of the tenancy. It began May 1, 2018; rent is $2,757.00, due on the first of the month; and the tenants paid a security deposit of $1,500.00, which the landlord holds in trust.

An unsigned copy of the tenancy agreement is submitted as evidence; it does not include the standard terms required by section 13 of the Act.

The landlord testified they served the Two Month Notice on the tenants in person on September 12, 2022; this was confirmed by the tenants.

A copy of the Two Month Notice was submitted as evidence. It is signed and dated September 12, 2022 by the landlord, gives the address of the rental unit, states an effective date, states the grounds for the Notice, and is in the approved form. The Notice indicates the tenancy is ending because the child of the landlord or the landlord's spouse will occupy the unit.

The tenants submitted that shortly after they refused a rent increase above the legal limit, the landlords told the tenants they must move out because the landlords' daughter will be moving in. The tenants submitted that the landlords are attempting to force the tenants to move out so the landlords can find new tenants at their desired increased rent.
Submitted as evidence is an August 16, 2022 text from the landlord to the tenants stating that due to rising interest and the rent freeze, the landlords must increase the rent to $3,350.00 or sell the unit.

The landlord testified that he spoke to the tenants before September 2022 because, with the increased interest rates on their variable-rate mortgage, the landlords could not continue to rent out the unit for the agreed amount.

The landlord testified that as the tenants did not co-operate with a bank appraiser, the landlords were not able to lock in their mortgage. The landlord testified that as a result, their daughter said she would move into the house earlier than she originally planned. The landlord submitted that this would work better economically for all.

The tenants submitted they co-operated with the appraiser, but objected to the appraiser taking photos inside the home as the tenants felt it was an invasion of their privacy.

The tenant testified that the landlord threatened them with eviction after the appraiser's visit. The tenant submitted that the landlords' motive is financial gain, not to have their daughter move into the unit.

The landlord referred to proof his daughter will be building on the site, but provided no further details. Submitted as evidence is an invoice, dated November 24, 2022, from a construction company for a topographic survey and plan. Also submitted is a letter from the construction company, dated October 25, 2022, confirming the intent to enter into a contract regarding the demolition of the unit and construction of a new home on the property.

The landlords' written submission, dated January 6, 2023, states that their daughter will be having renovations done to the unit "before her boyfriend of 10 years and her decide to move in."

Analysis

Based on the testimony of the parties, I find the Two Month Notice served in person and received on September 12, 2022. I find the landlords served the tenants in accordance with section 88 of the Act.

As the tenants received the Two Month Notice on September 12, 2022 and applied to dispute it on September 26, 2022, I find the tenants met the 15-day deadline set out by section 49(8) of the Act.

As the Two Month Notice is signed and dated by the landlord, gives the address of the rental unit, states an effective date, states the reason for ending the tenancy, and is in the approved form, I find it 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.

Section 49(3) of the Act states:

> (3) A landlord who is an individual 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.

The Two Month Notice, dated September 12, 2022, indicates the tenancy is ending as the rental unit will be occupied by the child of the landlord or the landlord's spouse.

The landlords submitted testimony and documentary evidence suggesting that their daughter intends to demolish the rental unit and build on the site. This would require the landlord serving the tenants with a Four Months' Notice to End Tenancy For Demolition or Conversion of a Rental Unit.

The landlords' written submission states that their daughter will be having renovations done to the unit "before her boyfriend of 10 years and her decide to move in." It is unclear to me if this means that the renovation will be done first, then the couple will

decide if they are moving in. The landlords did not provide testimony to clarify this. A renovation requiring the tenants to move out would require the landlords to apply for an end of tenancy and order of possession pursuant to section 49.2 of the Act, which was not before me.

The tenants testified they were served the Two Month Notice shortly after they refused a rent increase of $593.00. The text message submitted as evidence in which the landlord states that the landlords must increase the rent to $3,350.00 or sell the unit is dated August 16, 2022, and the Two Month Notice was served on the tenants less than one month later, on September 12, 2022.

Based on the preceding, I find on a balance of probabilities the landlords did not serve the Two Month Notice in good faith. Their intent is to demolish the rental unit and possibly avoid their obligations under the tenancy agreement and the Act: to honour the rent amount and only impose lawful rent increases.

Therefore, the Two Month Notice is cancelled, and the tenancy will continue until it is ended in accordance with the Act.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the tenants are successful in their application, I order the landlord to pay the $100.00 filing fee the tenants paid to apply for dispute resolution.

Pursuant to section 72 of the Act, the tenants are authorized to make a one-time deduction of $100.00 from a future rent payment in satisfaction of the above-noted award.

Conclusion

The tenants' application to dispute the Two Month Notice 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: February 14, 2023

Residential Tenancy Branch