



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding PLAN A REAL ESTATE SERVICES LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant October 17, 2022 (the “Application”). The Tenant applied as follows:

- To dispute a Two Month Notice to End Tenancy for Landlord's Use of Property dated September 28, 2022 (the “Notice”)
- To recover the filing fee

The Tenant appeared at the hearing. A.M., S.G. and K.H. appeared at the hearing. A.M. and S.G. own the rental unit. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I confirmed service of the hearing package and evidence, and no substantive issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all evidence provided. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, are the Landlords entitled to an Order of Possession?

3. Is the Tenant entitled to recover the filing fee?

Background and Evidence

The parties agreed there is a written tenancy agreement between them. The parties agreed rent is due on the first day of each month.

The Notice was submitted. The Notice states that it was issued by the Company Landlord. The grounds for the Notice are that the rental unit will be occupied by the Landlord or Landlord's spouse.

A.M. and S.G. testified that the Notice was sent to the Tenant by registered mail September 28, 2022. The Tenant testified that they received the Notice October 17, 2022, by registered mail.

A.M. and S.G. testified as follows. They used to live in the rental unit. They currently live in a unit that is going to be renovated and amalgamated with two other units such that it will be a major renovation. The City has issued permits for the renovation and amalgamation of their current unit. They cannot live in their current unit anymore and want to return to the rental unit. They are likely going to sell their current unit once it is renovated and amalgamated with the two other units. They want to move back into the rental unit long term, not just during the renovation and amalgamation of their current unit.

The Tenant testified that they do not believe A.M. and S.G. want to move back into the rental unit. The Tenant submitted that the Notice was actually issued because of their low rent amount. The Tenant testified that issues started with A.M. and S.G. in September of 2021 when A.M. and S.G. wanted to raise the cost of parking because they were losing money on the rental unit given the low rent amount. The Tenant testified that A.M. and S.G. subsequently issued the Tenant a One Month Notice for repeated late payment of rent which was cancelled by the RTB. The Tenant testified that they were also successful in disputing a rent increase. The Tenant testified that seven days later, they received the Notice. The Tenant submitted that the Company Landlord owns hundreds of units that A.M. and S.G. could move into. The Tenant disputed that A.M. And S.G. currently live in the unit they say they do. The Tenant testified that the units A.M. and S.G. say are going to be amalgamated with their current unit are actually for rent on the Company Landlord's website. The Tenant submitted that the evidence shows A.M. and S.G. received their building permit three months after

they issued the Notice. The Tenant submitted that A.M. has a history of evicting tenants unlawfully in order to raise rent.

In reply, A.M. and S.G. testified as follows. The Company Landlord's website lists properties as available for rent when the current tenancy ends and the current tenancies for the units being amalgamated with theirs do end as shown on the website. The rental units listed on the Company Landlord's website are owned by different people, not just A.M. and S.G. Renovations on their current unit are starting in early summer. They want to move back to the rental unit because A.M. works five minutes away and S.G. works a short drive away.

I have reviewed the documentary evidence of both parties and will refer to it below as necessary.

Analysis

The Notice was issued pursuant to section 49(3) of the *Residential Tenancy Act* (the "Act") which 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 Notice was issued by the Company Landlord; however, it is clear A.M. and S.G. own the rental unit and are the ones who wish to move into the rental unit. Further, the Company Landlord cannot issue the Notice. Pursuant to section 68 of the *Act*, I amend the Notice to show it as being issued by A.M. and S.G. I find this appropriate because A.M. and S.G. own the rental unit and are therefore "landlords" under the *Act*. Further, I find it clear that it is A.M. and S.G. who are stating they intend to move into the rental unit. I have also changed the style of cause to reflect A.M. and S.G.'s names because it is them who own the rental unit and seek possession of it through the Notice.

The Tenant had 15 days from receiving the Notice to dispute it pursuant to section 49(8)(a) of the *Act*. I accept the Notice was sent by registered mail September 28, 2022. Pursuant to section 90(a) of the *Act*, the Tenant is deemed to have received the Notice October 03, 2022. The Tenant disputed the Notice October 17, 2022, within time.

Pursuant to rule 6.6 of the Rules, A.M. and S.G. have the onus to prove the grounds for the Notice. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts are as claimed.

The Tenant has raised the issue of bad faith and this is addressed in RTB Policy Guideline 2A. A.M. and S.G. must prove they are acting in good faith.

I accept that A.M. and S.G. previously lived in the rental unit because the Tenant did not dispute this and the documentary evidence supports this.

I accept that A.M. and S.G. currently live in the unit they say they live in. I find A.M. and S.G. to be in the best position to know where they currently live. It is not clear how the Tenant would reliably know where A.M. and S.G. currently live. There is no compelling evidence before me to suggest A.M. and S.G. do not live where they say they live. The letters in evidence from designers and architects to A.M. and S.G. about the renovation and amalgamation of units does somewhat support that A.M. and S.G. currently live where they say they do.

A.M. and S.G. have provided documentary evidence from third parties showing they plan to renovate and amalgamate their current unit, that this will take more than six months and that they cannot reside in their current unit during the renovation and amalgamation.

Given the above, I accept that A.M. and S.G. cannot remain in their current unit and intend to move back to the rental unit, where they previously lived. I acknowledge the points made by the Tenant; however, I found no issues with the credibility of A.M. and S.G.'s testimony and they provided documentary evidence to support their testimony and the reasons they intend to move back into the rental unit. I find it particularly relevant that A.M. and S.G. used to live in the rental unit. I find it accords with common sense that A.M. and S.G. would return to the rental unit given their current unit will not be habitable for at least six months and given they used to live in the rental unit.

Given the above, I am satisfied A.M. and S.G. have proven the grounds for the Notice.

I have reviewed the Notice and find it complies in form and content with section 52 of the *Act* as required by section 49(7) of the *Act*.

Given the above, I find the Notice is valid and uphold the Notice. Given this, I dismiss the dispute of the Notice without leave to re-apply.

Section 55(1) of the *Act* states:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I have found the Notice complies with section 52 of the *Act* and have dismissed the Tenant's dispute of the Notice. The Landlords are entitled to an Order of Possession pursuant to section 55(1) of the *Act*. The Landlords are issued an Order of Possession effective at **1:00 p.m. on May 31, 2023**, the effective date of the Notice.

Given the Tenant has not been successful in the Application, they are not entitled to recover the filing fee.

Conclusion

The Landlords are issued an Order of Possession effective at **1:00 p.m. on May 31, 2023**. This Order must be served on the Tenant and, if the Tenant does not comply with this Order, it may be filed and enforced in the Supreme Court as an order of that Court.

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: March 13, 2023

Residential Tenancy Branch