



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

**Dispute Codes** CNL, FFT

### **Introduction**

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- the cancellation of the Two Month Notice to End Tenancy for Landlord's Use of Property (the "**Notice**") pursuant to section 49; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The parties confirm that each served the other with their documentary evidence.

### **Issues to be Decided**

Is the tenant entitled to:

- 1) an order cancelling the Notice; and
- 2) recover the filing fee?

If not, is the landlord entitled to an order of possession?

### **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 entered into a written, fixed term tenancy agreement starting April 1, 2022 and ending March 31, 2023. The parties submitted a copy of the tenancy agreement into evidence. They agree that the landlord did not indicate what would occur after the end of the fixed term (either the tenancy continuing on a month to month basis or the tenant being required to vacate the unit).

The parties agreed that they both signed a mutual agreement to end tenancy on March 31, 2023 at the start of the tenancy. However, the landlord concedes that this mutual agreement is unenforceable. I agree with this assessment, as the mutual agreement amounts to an attempt to contract out of the portions of the Act which set out what happens at the end of a fixed-term tenancy.

Monthly rent is \$1,700 and is payable on the first of each month. The tenant paid the landlord a security deposit of \$850, which the landlord continues to hold in trust for the tenant.

The tenant has not paid any rent for April 2023.

The rental unit is located in a single detached house, which is subdivided into three units. The landlord resides in the upper unit which has two bedrooms. There are two units on the lower level of the house, one of which is occupied by the tenant. The other lower-level unit is rented out to another tenant who is not a party to this application.

The parties agree that the landlord served the tenant with a copy of the Notice on February 24, 2023. The Notice specified the tenancy would end on April 30, 2023. It listed the reason for ending the tenancy as the rental unit will be occupied by the landlord.

The landlord's son testified that:

- The landlord:
  - o Purchased the residential property shortly before the tenant moved in.
  - o Decided to rent out the rental unit on a short-term basis to defray the higher-than-expected property transfer tax he had to pay.
  - o Only ever intended to rent the rental unit out for one year, as he requires the rental unit as a living room and a guest bedroom.
  - o Routinely hosts his cousins from England during the summer months, and a guest bedroom is necessary for this reason.
  - o Understood got the tenant would be moving to Mexico in early 2023, which made her an ideal candidate in his mind to rent the rental unit to.
- The rental unit can be "tied into" the upper unit quiet easily, as the upper unit's foyer shares a wall with the rental unit, which is already framed for a doorway and could be installed for a minimal cost.
- The other lower unit could not be linked in such a way.

The landlord son argued that the tenant was paying the current market rent for the rental unit, so the landlord could not reasonably be said to have issued the Notice due to a motivation to re-rent the rental unit for a higher monthly rate.

The tenant testified that she would not have moved into the rental unit if she had understood that it was only to be for a one-year term. She stated that she understood that following the end of the fixed term, the tenancy would convert to a month-to-month tenancy. She denied advising the landlord that she would be moving to Mexico at the end of the fixed term. Rather, she indicated that she and some of her family members were building an investment property in Mexico. She testified that she works close to the rental unit and wants to remain in it for that reason.

The tenant argued that the landlord has no intention of residing in the rental unit, because the upper unit is much nicer, with better views, and she cannot see how he would rather reside in a less-nice unit. She expressed a concern that the landlord was going to re-rent the rental unit to another tenant, or operate it as an Airbnb rental.

### **Analysis**

Section 49 of the Act permits a landlord to end a month to month tenancy by issuing a Notice to End Tenancy for Landlord's Use. This is a distinct method of ending a tenancy from ending a fixed term tenancy by indicating on the tenancy agreement that the landlord will be occupying the rental unit at the end of the fixed term (which is done per section 97(2)(a.1) of the Act and section 13.1 of the *Residential Tenancy Regulation*).

Section 49 does not require that a tenancy agreement specify anything about a landlord's intention to move into the rental unit. It only requires that the landlord intend in good faith to occupy the rental unit.

As such, I must only consider whether the Notice was issued in good faith. The fact that the landlord did not select one of the options as to what was to happen once the fixed term ended is not determinative as to whether the landlord can occupy the rental unit.

The Act places the burden of proof on the landlord to establish the Notice was issued in good faith. Residential Tenancy Branch (the "**RTB**") Policy Guideline 2A states that "good faith requires an honest intention with no dishonest motive". Based on the landlord's son's testimony, I find that the Notice was issued in good faith.

I accept that the landlord honestly intends to incorporate the rental unit into part of his living space and so he can have a guest bedroom. Policy Guideline 2A contemplates such a situation and states that such a reclamation of living space amounts to occupying a rental unit for residential purposes.

The fact that the landlord required the tenant to sign a mutual agreement to end tenancy at the start of the tenancy (which is not enforceable) supports the landlord's son's testimony that the landlord intended the tenancy to only last one year.

I do not find that the landlord has a dishonest motive for ending the tenancy.

On a balance of probabilities, I find that the landlord issued the Notice in good faith and that he intends to incorporate the rental unit into his existing living space.

I have reviewed the Notice and find that it complies with the form and content requirements set out at section 52 of the Act.

As such, I dismiss the tenant's application to cancel the Notice and to recover the \$100 filing fee without leave to reapply.

Section 55 of the Act requires me to issue an order of possession in the event that the tenant's application to cancel Notice is dismissed and if the Notice complies with section 52 of the Act.

As such, I issue the attached order of possession effective on April 30, 2023 at 1:00 pm.

**Conclusion**

I dismiss the tenant's application, without leave to reapply.

Per section 55 of the Act, I order that the tenant deliver vacant possession of the rental unit to the landlord by April 30, 2023 at 1:00 pm.

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: April 14, 2023

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Residential Tenancy Branch