



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNL, FFT

Introduction

The tenant applied on February 27, 2023 for (i) an order cancelling a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") pursuant to section 49 of the *Residential Tenancy Act* (the "Act"); and (ii) authorization to recover the cost of the filing fee under section 72 of the Act.

Issue(s) to be Decided

1. Is the tenant entitled to an order cancelling the Notice?
2. If not, is the landlord entitled to an order of possession?
3. Is the tenant entitled to recover the cost of the filing fee?

Background and Evidence

In reaching this decision, I have considered all relevant evidence that complied with the *Rules of Procedure*. Only the necessary oral and documentary evidence that helped resolve the issues of the dispute and explain the decision is included below.

The tenancy began August 1, 2019. Rent is \$1,800.00 due on the first day of the month. The landlord currently retains a \$900.00 security deposit. There is a copy of the written tenancy agreement in evidence.

The landlord served the Notice on February 16, 2023 in person to the tenant, who was there to receive it. Page two of the Notice indicates that the rental unit will be occupied by the child of the landlord or the landlord's spouse.

The landlord affirmed that the landlord's daughter MH ("MH") has been looking for a place to rent since January 2023 without much success. While the landlord knew MH was looking for a new place to live in, the landlord did not offer the rental unit to MH as the landlord did not want to evict the tenant. The landlord originally wanted the tenancy to continue but soon started having issues with the tenant. The landlord then realised after having issues with the tenant that it would be best if MH moved into the rental unit. The landlord further affirmed that the landlord wanted to sell the rental unit in January 2022 as the landlord was losing money every month due to cost of the mortgage. The landlord had listed the property but were not getting any offers that were close to the landlord's valuation. Therefore, the landlord decided to not sell so MH can use the property as MH is capable of paying a rent that will cover the landlord's expenses.

MH affirmed that MH's husband co-owns MH's current property with another family member. Since moving in, MH has had plans to renovate that property and to rent out the basement. MH added that, since MH's family's financial situation is not secure, MH's plans since December 2022 was to move into a rental unit whose rent is cheaper than MH's mortgage payments (they are currently paying \$3,400.00 a month). MH affirmed that MH and her family are planning to move into the rental unit on May 1, 2023 and will be paying the landlord \$2,200.00 a month as rent.

The tenant affirmed that on January 26, 2023, the landlord informed the tenant that the landlord may have to sell the rental unit as the landlord can no longer afford the mortgage payments. The tenant affirmed that the landlord told the tenant that if the tenant was able to pay \$2,200.00 in rent, the landlord will not list the rental unit for sale. On February 5, 2023, the tenant informed the landlord that that the tenant would be able to start paying \$2,200.00 by March, 2023. On February 11, 2023, the landlord informed the tenant that the tenant could continue living in the rental unit if the tenant agreed to pay \$2,200.00 but that the landlord would still be selling the rental unit. The tenant responded to the landlord that the tenant will only sign a new lease with \$2,200.00 as rent if the landlord did not sell the rental unit. The tenant affirmed that the landlord countered by saying the landlord will only un-list the rental unit if the tenant offers to pay the market rate of \$2,800.00. The tenant affirmed that, following this exchange, the tenant did not hear from the landlord again on this issue until the tenant was served with the Notice on February 16, 2023.

In response to the tenant's submissions, the landlord affirmed that, after the tenant offered to pay \$2,200.00 in rent if the landlord took down the sale listing, the landlord felt the tenant was telling the landlord what the landlord could or could not do with the property. The landlord affirmed that the landlord did not feel it was the tenant's place to

tell the landlord this. The landlord also affirmed that the landlord did not want to continue the relationship with the tenant because the landlord did not appreciate the manipulative comments about whether the landlord was allowed to sell the rental unit and increase their rent.

Analysis

Section 49(3) of the Act allows a landlord to end a tenancy if the landlord or a close family member intends in good faith to occupy the rental unit. Under Rule of Procedure 6.6, a landlord has the onus of proof to establish, on the balance of probabilities, that the Notice is valid. Furthermore, Policy Guideline 2A states that good faith requires an honest intention with no dishonest motive, regardless of whether the dishonest motive was the primary reason for ending the tenancy. When the issue of a dishonest motive or purpose for ending the tenancy is raised, the onus is on the landlord to establish they are acting in good faith.

Based on the parties testimony and evidence, I find that the landlord has not overcome the burden of proof to show that the landlord is acting in good faith for the following reasons:

- The Notice was served on the tenant shortly following multiple attempts by the landlord to increase the rent above what is permitted by the Act.
- The landlord offered to remove the sale listing for the rental unit if the tenant agreed to pay the market rate of \$2,800.00 (a \$1,000.00 increase from the current rent of \$1,800.00).
- The landlord affirmed that the landlord was losing money every month due to the cost of the mortgage.
- MH affirmed that MH's plan was to move into a rental unit as MH could no longer afford the mortgage on MH's current property. MH also affirmed that MH needed to move out of MH's current property because renovations are scheduled to be completed, which required the property to be empty. I find these submissions to be inconsistent as MH would still have to pay her current mortgage (since it is only being renovated and not rented out) on top of paying the landlord for the rental unit.
- The landlord affirmed that the landlord did not want to continue the relationship with the tenant because the landlord did not appreciate the manipulative comments made by the tenant about whether the landlord was allowed to sell the rental unit and increase the rent.

As stated in Policy Guideline 2A, good faith requires an honest intention with no dishonest motive, regardless of whether the dishonest motive was the primary reason for ending the tenancy. Based on the reasons set out above, I find that it is more likely than not that the Notice was issued in part due to the landlord's desire to increase rent above what is allowed in the Act and in part due to the landlord being frustrated with the tenant for negotiating with the landlord on whether the landlord could sell the rental unit.

Based on the above findings, I am cancelling the Notice.

Since the tenant is successful in the tenant's application, the tenant is entitled to recover the cost of the filing fee under section 72 of the Act.

Conclusion

The tenant's application is granted and the tenancy shall continue until it is ended in accordance with the Act. The tenant is awarded a monetary order in the amount of \$100.00.

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 20, 2023

Residential Tenancy Branch