



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNL

Introduction

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenant, in which the Tenant applied to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property.

The Tenant stated that on January 04, 2023 the Dispute Resolution Package and evidence submitted to the Residential Tenancy Branch on December 27, 2022 were sent to the Landlord, via registered mail. The Landlord acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On April 11, 2023 the Landlord submitted evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was sent to the Tenant, via registered mail, on April 11, 2023. The Tenant acknowledge receipt of this evidence and it was accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

The participants were advised that the Residential Tenancy Branch Rules of Procedure prohibit private recording of these proceedings. Each participant affirmed they would not record any portion of these proceedings.

Issue(s) to be Decided

Should the Two Month Notice to End Tenancy for Landlord's Use of Property be set aside?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began in 2020.

The Landlord and the Tenant agree the Landlord left a Two Month Notice to End Tenancy for Landlord's Use of Property on the counter where the Tenant usually picks up his mail. The Landlord stated that she left the Two Month Notice to End Tenancy for Landlord's Use of Property on the counter on December 27, 2022 and the Tenant stated that he found it on that date.

The parties agree that the Two Month Notice to End Tenancy for Landlord's Use of Property declared the rental unit must be vacated by March 01, 2023 because the unit will be occupied by the landlord or the landlord's spouse.

The Landlord stated that she will move into the rental unit while her suite in the upper portion of the residential complex is painted, and her kitchen is renovated. She estimates that the renovations will commence in May of 2023 and will be completed in approximately two months.

The Landlord stated that once the renovations are completed, she will move back into her suite on the upper level of the complex. She stated that once she moves out of the rental unit, her niece or nephew may move into the unit.

The Landlord and the Tenant agree that the Landlord previously served the Tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property, which was dismissed due to service issues.

The Landlord and the Tenant agree that in January of 2022 the Landlord told the Tenant that he should move because he not happy in the rental unit.

The Landlord stated that she has asked the Tenant to pay a portion of utility costs because his son moved into the rental unit. The Tenant stated that he does not recall

being asked to pay a portion of these costs, but he believes the Landlord wishes him to do so.

Analysis

Section 49(3) of the *Act* permits a landlord who is an individual to 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.

On the basis of the undisputed evidence, I find that the Tenant was served with a Two Month Notice to End Tenancy for Landlord's Use of Property, which declared the tenancy was ending because the Landlord and/or her spouse would be living in the unit.

Section 51(2)(b) of the *Act* imposes a penalty on the landlord who serves a notice to end tenancy pursuant to section 49(3) of the *Act* if the landlord does not occupy the rental unit for at least six months, beginning within a reasonable period after the effective date of the notice. I therefore conclude that the legislation should be interpreted to mean that a landlord may only end a tenancy, pursuant to section 49(3) of the *Act*, if the landlord intends to occupy the rental unit for at least six months.

As the evidence clearly shows that the Landlord does not intend to occupy the rental unit for at least six months, I find that the Two Month Notice to End Tenancy for Landlord's Use of Property was not served in good faith. As such, I grant the application to cancel the Two Month Notice to End Tenancy for Landlord's Use of Property.

I note that the Landlord does not have authority to end a tenancy for the purposes of allowing a niece or nephew to live in the unit.

Conclusion

The Two Month Notice to End Tenancy for Landlord's Use of Property is set aside and has no force or effect. This tenancy shall 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: April 28, 2023

Residential Tenancy Branch