



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **CNL, FFT**

Introduction

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act (“the Act”) for orders as follows:

- cancellation of the landlord’s Two Month Notice to End Tenancy for the Landlord’s Use pursuant to section 49 of the Act
- for reimbursement of the filing fee pursuant to section 72 of the Act

Both parties attended the hearing with the landlord RM appearing with agent AM. The tenants SH and TE appeared for themselves.

The hearing was conducted by conference call. The parties were reminded to not record the hearing pursuant to Rule of Procedure 6.11. The parties were affirmed. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

The tenants confirmed receipt of the Two Month Notice to End Tenancy (“Two Month Notice”) dated November 27, 2022 with an effective date of January 31, 2023, and the landlord’s materials in response to the dispute notice. The landlord confirmed receipt of the dispute notice and the tenant’s materials. Service for both parties complies with sections 88 and 89 of the Act.

Issue(s) to be Decided

1. Is the Two Month Notice valid and enforceable against the tenants? If so, is the landlord entitled to an order of possession?
2. Are the tenants entitled to recover the filing fee for this application?

Background and Evidence

The tenancy commenced on January 1, 2013 on a month to month basis. Rent is currently \$1,856.00 per month due on the first of the month. The landlord holds a security deposit of \$850.00 and a pet deposit of \$850.00 in trust for the tenants. The tenants still occupy the rental unit.

The landlord testified that he served the two month notice on the tenants after exploring other financial options given the current market. He had purchased the rental property initially with a long term plan of moving into the property. He testified that the plan to move into the property was accelerated by the current market and interest rates. He was no longer able to afford to rent the property to the tenants at the current rent, and was unable to increase the rent legally to an amount that would cover his costs. He approached the tenants and asked them to agree to a rent increase higher than the legislated amount of rent increase. The tenants refused. He then placed the rental property for sale. He was unable to get a satisfactory offer. The landlord and his partner are retired and had purchased the rental unit with an intention to ultimately occupy the rental unit. The market conditions had forced them to explore other options including asking the tenants to agree to a rent increase and attempting to sell the rental unit. The tenants didn't agree to the rent increase and the landlord was unable to sell the rental unit. He then decided to move into the rental unit for financial reasons.

The tenants did not dispute the landlord's evidence. However they suggested that the fact that the landlord listed the property is evidence of bad faith on the part of the landlord in issuing the Two Month Notice. Further the tenants testified that the landlord asked the tenants to give notice to end the tenancy and he would in turn compensate them with one months rent. The tenants suggest that this is evidence of bad faith on the part of the landlord as he was attempting to have them waive their rights under the Act.

Analysis

RTB Rules of Procedure 6.6 states, "The standard of proof in a dispute resolution hearing 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. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenants apply to cancel a Notice to End Tenancy.” In this case, the landlord has the burden of proving the validity of the Two Month Notice served on the tenants.

I find the landlord’s evidence to be compelling and the facts as outlined by the landlord are not disputed by the tenant. The tenant is alleging that the landlord is acting in bad faith and that the landlord’s actions of asking for a rent increase and attempting to sell the rental unit are evidence of the fact that the landlord does not intend in good faith to occupy the rental unit. I find that the landlord has given a credible explanation of the events surrounding the Two Month Notice and I find that the landlord is acting in good faith and intends to occupy the rental unit as stated in the Two Month Notice. Specifically I accept that the current financial situation has changed the landlord’s plans, and that the landlord had attempted to rectify the situation in other ways prior to issuing the Two Month Notice.

The Two Month Notice meets the form and content requirements of section 52 of the Act. Section 55 of the Act requires me to issue an order of possession in favour of the landlord if the Two Month Notice meets the form and content requirements of section 52 of the Act and if I dismiss the tenant’s application. As section 55(1) of the Act is satisfied, the landlord is entitled to an order of possession effective April 30, 2023 based on section 55(3) of the Act.

Conclusion

The tenant’s application is dismissed. The landlord is granted an order of possession effective 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 22, 2023

Residential Tenancy Branch