



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing

Page: 1

DECISION

Dispute Codes CNL OPL MNDCT FFT

Introduction

The tenants seek 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"). They also seek compensation under section 51(2) of the Act, and recovery of the application fee under section 72 of the Act. By way of cross application, the landlords seek an order of possession based on the Notice.

As a brief aside, given that the tenancy has not yet ended, the tenants' claim for compensation under section 51(2) of the Act (equivalent to twelve months of rent) is premature and must be dismissed, with leave to reapply.

Issues

Are the tenants entitled to an order cancelling the Notice? If not, are the landlords entitled to an order of possession?

Evidence and Analysis

In a dispute resolution proceeding, the applicant must prove their claim on a balance of probabilities (meaning "more likely than not"). I have considered the parties' testimony, arguments, submissions, and documentary evidence, but will only refer to evidence that I find relevant and necessary to explain the decision.

I note that the parties attempted to settle this matter during the first 17 minutes of the hearing. Unfortunately, they were unable to reach an agreement, so I proceeded to hear testimony, argument, and submissions from the parties regarding their applications.

The landlords served the Notice on the tenants on or about July 20 or July 21, 2023. The tenants filed their application to dispute the Notice on July 28, 2023. All four pages of the Notice were served on the tenants and submitted into evidence by the landlords.

The reason the landlords issued the Notice is that, due to insurance requirements, they must physically occupy at least part of the rental unit. The rental unit is a split-level home. Unless the landlords occupy the rental unit, they will not have insurance and will be in breach of their mortgage requirements. The reason for the Notice is stated on page two and indicates that the landlord intends in good faith to occupy the rental unit.

The tenants testified that they are in the process of moving and obtained keys to their new home on October 1. The tenants did not, it is noted, dispute that the landlords have issued the Notice in good faith.

In this dispute, the Notice was issued under section 49(3) of the Act, which states that 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 landlords’ sworn testimony establishes that they fully intend in good faith to occupy the rental unit as soon as possible. The tenants did not dispute that the landlords intend to occupy the rental unit, and they did not raise the issue of good faith. Last, having reviewed the Notice, it is my finding that it complies with the form and content requirements of such a notice to end tenancy under section 52 of the Act.

For these reasons, I find on a balance of probabilities that the landlords have issued the Notice in compliance with the Act and that they intend in good faith to occupy the rental

unit. I do not find that there is any evidence to suggest otherwise. Thus, I must dismiss the tenants' application for an order cancelling the Notice, and the Notice is upheld.

Pursuant to section 55(1) of the Act the landlords are granted an order of possession. A copy of the order of possession is issued with this decision to the landlords, who must serve a copy of the order of possession upon the tenants.

Having carefully considered the submissions of the parties about the date of the end of the tenancy, I am not inclined to grant a two-day order of possession, nor am I inclined to end the tenancy in two weeks. A compromise must be reached between letting the tenants vacate and the landlords' urgent need to occupy the property. As such, the order of possession will have an effective date of October 14, 2023. This is the date on which the tenancy shall end.

Conclusion

The tenants' application is dismissed, including the claim for the application fee.

The landlords' application is hereby granted, and the landlords are granted an order of possession with an effective date of October 14, 2023.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: October 7, 2023

Residential Tenancy Branch