



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDC, MNSD, O, FF

Introduction

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

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property, dated November 7, 2014 ("2 Month Notice"), pursuant to section 49;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67;
- authorization to obtain a return of all or a portion of his security deposit, pursuant to section 38;
- other unspecified remedies; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord and her agent, BG (collectively "landlord") and the tenant, attended the hearing and were each given a full opportunity to be heard, to present their sworn testimony, to make submissions and to call witnesses. The tenant's agent was authorized to represent the landlord as a language interpreter at the hearing and he provided all of the testimony at the hearing. He is also a neighbour to the landlord at the rental unit.

The landlord testified that she personally served the tenant with a 2 Month Notice, at the rental unit on November 7, 2014. The tenant confirmed receipt of the 2 Month Notice but stated that he received it from the landlord's son not the landlord herself. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the 2 Month Notice on November 7, 2014.

The tenant testified that he personally served the landlord with his Application for Dispute Resolution hearing notice on November 27, 2014. The landlord confirmed receipt of the notice. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was served with the tenant's notice, as declared by the parties.

The tenant testified that he personally served the landlord with his written evidence package on December 1, 2014. The landlord testified that she did not receive the evidence. The tenant testified that a previous tenant from his rental unit, CC, witnessed this service. CC did not testify at this hearing, as she was unavailable to attend. The evidence consists of receipts, handwritten notes, photographs and audio recordings. The audio recordings are of conversations between the landlord and tenant, which the landlord confirmed she participated in and was aware the tenant was recording the conversations. Accordingly, I find that there is no prejudice to the landlord in considering the audio recordings from the tenant's evidence package. However, I will not be considering the photographs, receipts or handwritten notes from the tenant's evidence package, as there is conflicting testimony regarding service and the tenant was unable to produce a witness to confirm service. In any event, those photographs, receipts and handwritten documents are not material or necessary in making my decision.

During the hearing, the tenant withdrew his application for return of his security deposit and for other unspecified relief, as he noted they were made in error.

Issues to be Decided

Should the landlord's 2 Month Notice be cancelled?

Is the tenant entitled to a monetary award for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The landlord testified that this periodic tenancy began on February 1, 2014. Monthly rent in the current amount of \$850.00 is payable on the first day of each month. A security deposit of \$475.00 was paid by the tenant on February 1, 2014, as the rent was previously \$950.00 at the beginning of this tenancy. The tenant continues to reside in the rental unit. The tenant occupies the basement suite and the landlord occupies the main floor of a house. A written tenancy agreement was not provided with the tenant's

application, as he claimed that the landlord did not provide him with a copy. During the hearing, I directed the landlord to provide a copy of the tenancy agreement to the tenant and she agreed to do so.

The landlord's 2 Month Notice, entered into written evidence by the tenant, identified the following reason for seeking an end to this tenancy on the effective date of January 1, 2015:

- *The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse.*

The landlord testified that she issued the 2 Month Notice because her husband's father ("father") will be moving into the tenant's rental unit. The father currently lives on the main floor of the property, together with the landlord, her spouse and children. The landlord indicated that the father is starting to use the bathroom on his own, causing a negative smell to come from the bathroom, and disrupting the landlord. The landlord stated that she does not want to take care of the father any longer or deal with the smell. The landlord has spoken with a nursing home in the area, and they are prepared to send nurses to live-in and take care of the father. The landlord requires the rental unit so that the father and his nurses can live in the basement. The landlord stated that currently, the nurses wear their shoes when they come to care for the father and they are soiling the carpets of her main floor unit. The landlord noted that there is a separate entrance to the basement unit, which the nurses would be able to access from outside, without having to enter the main floor and soil the carpets. The landlord indicated that there are children running around on the main floor and that the father being there is disruptive.

The tenant alleged that City workers came to his rental unit to inquire as to whether the father was living there because it was an illegal suite. The landlord testified that the basement unit is a legal suite. She stated that City workers came to the rental unit to inquire as to the reason why trees were cut down in the backyard of the property, which the landlord said was done mistakenly. The landlord denied that the City workers inquired about the illegal nature of the basement suite or the father living in the rental unit.

The landlord testified that the tenant has invited people over to do drugs at the rental unit. She noted that there have been many cars in her driveway and people have been coming and going frequently from the tenant's rental unit. The landlord's agent stated that the landlord would do anything to get the tenant out of the rental unit. When questioned about this statement, the landlord's agent denied making it. When

reconfirming the information, the landlord's agent appeared to be upset and then admitted making the statement.

The landlord indicated that the tenant has caused two fires at the rental unit, which has caused her daughter to be fearful. The landlord noted that the first fire was unintentional on the tenant's part, and was put out before the fire department arrived. The landlord stated that the second fire was due to the tenant smoking in the backyard outside, as the fire was beside the door. The landlord indicated that she put out that fire. The tenant denies that there were any fires at the rental unit, stating that there was only smoke on two occasions. He noted that the fire department came during the first incident and confirmed that there was no fire, as the rental unit was aired out by the tenant and landlord together. The tenant stated that the second incident arose because of noodles boiling in a pot when there was grease on the stove, causing smoke and the fire alarm to activate.

The tenant provided audio recordings of conversations between him, the landlord and the landlord's husband. When discussing the 2 Month Notice, the landlord's husband refers to the tenant starting fires at the rental unit, the tenant smoking in the rental unit and wanting the tenant to leave the rental unit. The tenant denies starting any fires on the recordings. During the hearing, when questioned about whether she knew she was being recorded, the landlord initially denied knowing. When confronted as to the landlord's husband's statement on the audio recording that he knew he was being recorded, as the tenant was openly showing his cell phone recording the conversation to the landlord, the landlord testified that she was, in fact, aware that she was being recorded during those conversations.

The tenant stated that the day before he was served with the 2 Month Notice, the landlord asked the tenant's wife whether the tenant liked living in the rental unit or whether he wanted to start looking for a new unit. The tenant testified that during this conversation, the landlord said that her daughter was unable to sleep for a week and was sick because she was worried about the house burning down from the tenant starting fires in the rental unit.

The tenant is seeking a monetary order in the amount of \$430.00 for damaged property, which he says is due to the negligence of the landlord. The tenant amended his application to seek only \$430.00 rather than \$975.00 total, as he withdrew his claim for return of his security deposit in the amount of \$475.00.

The tenant is seeking to replace his children's toys, which he says was damaged due to the negligence of the landlord. The tenant is seeking a new children's powerwheel, a

lawnmower, a bike helmet and water guns. He stated that the powerwheel is broken, as it has cracked windshields and doors. He indicated that other children who were playing at the rental property threw his children's bike helmet and water guns into a sewage drain area because they were angry that they could not play with the toys. The tenant stated that the bike helmet is soaked with sewer water and mud, the water guns are cracked and the lawnmower still works but does not blow bubbles.

The tenant claimed that his children's toys were damaged because the landlord invited other children over to the rental property and allowed them to use these toys. The tenant claimed that he specifically advised the landlord that these toys could not be used and he placed them under a patio/fence area where his own children would be unable to reach them. The tenant does not know when or how the toys were damaged or who damaged them. The tenant stated that his own children were playing with other children invited by the landlord, when the toys were damaged. The tenant stated that his children and the landlord knew that they were not allowed to use those toys, it was placed in a specific spot where his children could not reach them and his children were too small to cause such damage to the toys. The tenant said that the landlord's son told him, in front of the landlord, that a neighbour's daughter damaged the toys. The tenant testified that he asked the landlord to speak to the neighbour's daughter to see if she had damaged the toys, but the landlord failed to do this. The tenant stated that he did not speak to the neighbour's daughter either, to inquire about the toys.

The landlord testified that while the tenant's powerwheel was broken, she is not responsible for this damage. She stated that she does not invite the neighbourhood children over to play, that they come on their own, even when they are not asked, and the landlord is not responsible for their behaviour. The landlord indicated that the tenant's daughter was playing with all the neighbourhood children, when the toys were damaged. The tenant denies that his daughter was present during that time. The landlord stated that neither she nor the tenant know who damaged the toys.

Analysis

While I have turned my mind to all of the evidence, including the audio recordings and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

Subsection 49(3) of the *Act* sets out that a landlord may end a tenancy in respect of a rental unit where the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. The landlord stated that her husband's father intends to

occupy the tenant's rental unit. In accordance with subsection 49(1) of the Act, a "close family member" includes the landlord's spouse's parent.

According to subsection 49(8) of the Act, a tenant may dispute a notice to end tenancy for landlord's use, by making an application for dispute resolution within fifteen days after the date the tenant receives the notice. The tenant received the 2 Month Notice on November 7, 2014, and filed his original application on November 20, 2014. Therefore, he is within the 15 day time limit under the Act. The onus, therefore, shifts to the landlord to justify the basis of the 2 Month Notice.

Residential Tenancy Policy Guideline 2: Good Faith Requirement When Ending a Tenancy states:

"If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy.

If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate that they do not have an ulterior motive for ending the tenancy."

The landlord did not provide any documentary evidence at this hearing. The landlord stated that she is a recent immigrant and unaware of the rules for evidence at hearings before the Residential Tenancy Branch.

The landlord did not provide documentary evidence regarding the assessment or plans for the rental unit to be renovated for the father's use. The landlord did not provide any medical documentary evidence to support her testimony regarding the father's medical conditions and his need for nursing care. The landlord even stated that the father was becoming more independent, going to the bathroom on his own, which conflicts with her assertion that he requires nursing care. I am not persuaded by the landlord's evidence that the father requires his own separate suite, even if he does require nursing care. The reasons provided by the landlord include wanting to avoid dirty carpets and a foul smell from the bathroom and wanting to minimize disruption to children running around on the main floor.

The landlord stated that she would do anything to have the tenant vacate the rental unit. She stated that the tenant has people over to the rental unit to engage in drug activity, that there are numerous cars in the driveway and that people are regularly visiting the tenant in his rental unit. She provided no documentary evidence or witness testimony to confirm these allegations. In any event, it is not a reason for issuing a 2 Month Notice and I find that it confirms one of the landlord's ulterior motives for issuing the 2 Month Notice.

I find that the tenant's audio recordings demonstrate that the landlord had an ulterior motive for issuing the 2 Month Notice. As per the audio recordings, when confronted about the 2 Month Notice and compensation for the notice by the tenant, the landlord's husband responds by stating that the tenant started fires and smoked in the rental unit. In the audio recording, the landlord herself states that she wants the tenant to leave the rental unit. The landlord testified that the tenant had caused at least one fire, that her daughter was afraid for this reason, and that the fire department had attended the rental unit. The tenant stated that he was served with the 2 Month Notice on the day after the landlord questioned the tenant's wife about whether the tenant wanted to leave the rental unit because their daughter was sick and unable to sleep, for fear of the house burning down because the tenant started two fires.

The tenant testified that City workers attended at his rental unit, alleging that it was an illegal suite and inquiring as to whether the father was living there. This raises a question as to whether the landlord may be intending to complete renovations in the rental unit in order to convert it to a legal suite. It also raises a question as to the current residence of the father, whether he is listed as living in the tenant's rental unit and if so, the reason for this listing. I find that this further demonstrates that the landlord had an ulterior motive for issuing the 2 Month Notice.

I find that the landlord had a number of ulterior motives for issuing the 2 Month Notice and it was not done in good faith. Based on a balance of probabilities and for the reasons outlined above, I find that the landlord has not met her burden of proof to show that her husband's father intends to occupy the tenant's rental unit in good faith.

Accordingly, I allow the tenant's application to cancel the 2 Month Notice. The landlord's 2 Month Notice, dated November 7, 2014, is hereby cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

The tenant did not provide sufficient evidence that his children's toys were damaged due to the fault of the landlord. Both parties do not know who damaged the toys. The tenant assumes that the damage was caused by the landlord inviting children over to

the rental property. The landlord denied this. The tenant did not make further inquiries to determine who caused the damage. The tenant also claimed for costs of providing evidence for this hearing. However, the only hearing-related costs recoverable under section 72 of the Act, are for filing fees for applications for dispute resolution. Therefore, these evidence-related costs, are not recoverable by the tenant. Accordingly, the tenant's application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, is dismissed.

As the tenant was partially successful in his Application, he is entitled to recover the filing fee of \$50.00 from the landlord.

Conclusion

The landlord's 2 Month Notice, dated November 7, 2014, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

I order that the tenant is entitled to deduct \$50.00 from his future rent at the rental unit, to recover the filing fee for this Application from the landlord. This is in accordance with the offsetting provisions of Section 72(2)(a) of the *Act*.

The tenant's application for authorization to obtain a return of all or a portion of his security deposit and for other unspecified relief, is withdrawn.

The tenant's application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, is dismissed.

I order the landlord to provide the tenant with a copy of the tenancy agreement.

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: January 6, 2015

Residential Tenancy Branch

