



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL FF

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenant on June 18, 2015 to cancel a 2 Month Notice to end tenancy for landlord's use and to recover the cost of the filing fee from the Landlord for this application.

I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

The hearing was conducted via teleconference and was attended by the Landlord, his Agent, the Tenant and the Tenants' Agent. The Tenant's application listed only one of the two co-tenants listed on the tenancy agreement. The majority of the Tenant's evidence submission was presented by the Tenants' Agent, hereinafter referred to as evidence from the Tenants. Therefore, for the remainder of this decision, terms or references to the Tenant importing the singular shall include the plural and vice versa, except where the context indicates otherwise.

Section 1 of the Act defines a landlord in relation to a rental unit, to include the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord permits occupation of the rental unit under a tenancy agreement, or exercises powers and performs duties under this Act, the tenancy agreement or a service agreement.

All of the Landlords evidence was presented by the Landlord's Agent, hereinafter referred to as Agent, pursuant to section 1 of the *Act*. Accordingly, for the remainder of this decision, terms or references to the Landlord importing the singular shall include the plural and vice versa, except where the context indicates otherwise.

The Tenant affirmed that they served the Residential Tenancy Branch (RTB) with copies of the same documents they served the Landlord. The Landlord acknowledged

receipt of evidence served by the Tenant and no issues were raised regarding service or receipt of that evidence.

The Rules of Procedure 3.15 provide that to ensure fairness and to the extent possible, the respondent's evidence must be organized, clear and legible. The respondent must ensure documents and digital evidence that are intended to be relied on at the hearing, are served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. In all events, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than 7 days before the hearing.

The Landlord testified that they did not serve the Tenant with the same documents they served the RTB as they only served the Tenants with a copy of the Landlord's medical note. The Landlord served three documents to the RTB as follows: (1) authorization letter for the Agent to represent the Landlord; (2) the Landlord's written statement; and (3) a medical note. The Landlord's evidence was not on the RTB file at the time of the hearing.

The Tenant confirmed receipt of the Landlord's medical note and stated that they were not served any other evidence. Therefore, as the Landlord's evidence was not served in accordance with Rule 3.15, I informed the Landlord that I would not be considering the two documents which were not served upon the Tenants, as that would be a breach of the principals of natural justice.

I explained that I would consider the Landlord's oral submissions about those documents and the medical note. The Landlord was in agreement to proceeding with oral submissions regarding their evidence.

During the hearing each party was given the opportunity to provide their evidence orally and respond to each other's testimony. Following is a summary of the submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Has a 2 Month Notice to end tenancy for landlord's use been issued in accordance with the *Act*?
2. What is the effective date of the 2 Month Notice issued June 8, 2015?
3. Has the Landlord proven that the Notice was issued in good faith?

Background and Evidence

The undisputed evidence was the Landlord and Tenants entered into a written fixed term tenancy agreement that began on June 1, 2014 which was scheduled to end on June 1, 2015. The monthly rent of \$1,400.00 was payable on the first of each month and on May 24, 2014 the Tenants paid \$700.00 as the security deposit.

On May 24, 2014 the parties entered into a subsequent written agreement to extend the fixed term tenancy agreement for the period from June 1, 2015 to August 1, 2016. The parties mutually agreed that the rent would increase from \$1,400.00 to \$1,475.00 per month effective June 1, 2015, as written in the subsequent agreement.

On June 8, 2015 the Landlords served the Tenants with a 2 Month Notice to end tenancy via registered mail. The Notice was issued listing an effective date of August 31, 2015 for the following reason(s):

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 Landlords submitted that on June 1, 2015 the Landlord had a discussion with the Tenants about his desire to move back into the rental unit. He was also planning on going out of the country for six months so after consideration of the Tenants desire to stay in the rental unit the Landlord decided to enter into another fixed term tenancy with the Tenants.

The Landlord argued that their trip out of country was cancelled after they had to stay and deal with the previous RTB hearing and tenancy issues which were brought forth by the Tenants.

The Landlord read the medical note into evidence which indicated the Landlord was suffering with a medical condition affecting his knee(s). The Landlord argued that the medical condition has gotten worse so the Landlord needs to move into the rental unit which is only one level.

The Tenants confirmed receipt of the Notice on June 15, 2015 and argued that they are disputing the Notice because they need to stay in the rental unit for their own medical reasons as one of them recently had surgery and is currently receiving home care.

The Tenants submitted that they did their due diligence in planning for a stable home during the recovery period which is why they agreed to the rent increase in order to negotiate another 14 month fixed term tenancy agreement.

The Tenants asserted that the 2 Month Notice was issued after the Landlord had a change of heart which appeared to be in retaliation to the Tenants' previous application for Dispute Resolution. The Tenants had filed a previous application on May 25, 2015. Upon review of the RTB Record during the hearing it was determined that the Landlord filed a cross application on June 8, 2015 which was heard with the Tenants' first application. The date the Landlord filed their application was the same date they served the 2 Month Notice to the Tenants.

The Tenants pointed to the Landlord's medical note and argued that it was not issued until August 10, 2015 which is long after they signed their subsequent 14 month tenancy contract. They argued that the Landlord had told them that he could not move into the rental unit because of financial issues and he never mentioned a medical condition prior to issuing this Notice.

Analysis

The *Act* and Residential Tenancy Policy Guidelines (Policy Guideline) stipulate specific provisions regarding fixed term tenancies and notices to end tenancy as follows:

Regarding a Landlord's Notice to End a Tenancy

Section 49(2) of the *Act* states that subject to section 51 [*tenant's compensation: section 49 notice*], a landlord may end a tenancy for a purpose referred to in subsection (3), (4), (5) or (6) by giving notice to end the tenancy effective on a date that must be

- (a) not earlier than 2 months after the date the tenant receives the notice,
- (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
- (c) **if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.**

[My emphasis added by bold text]

Section 49(3) of the Act provides 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.

Regarding Effective Dates of a Notice to End Tenancy

Section 53 of the Act stipulates that incorrect effective dates are automatically changed as follows:

53 (1) If a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable.

(2) If the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.

(3) In the case of a notice to end a tenancy, other than a notice under section 45 (3) [*tenant's notice: landlord breach of material term*], 46 [*landlord's notice: non-payment of rent*] or 50 [*tenant may end tenancy early*], if the effective date stated in the notice is any day other than the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, the effective date is deemed to be the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement

- (a) that complies with the required notice period, or
- (b) if the landlord gives a longer notice period, that complies with that longer notice period.

Regarding the Good Faith Requirement

The *Residential Tenancy Policy Guideline # 2* sets out the two part test for the “good faith” requirement as follows:

- 1) The landlord must truly intend to use the premises for the purposes stated on the notice to end the tenancy; and
- 2) the landlord must not have a dishonest or ulterior motive as the primary motive for seeking to have the tenant vacate the residential premises.

Regarding the Filing Fee

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

The 2 Month Notice Issued June 8, 2015

Upon review of the 2 Month Notice to End Tenancy, I find the Notice to be completed on the prescribed form and it was served upon the Tenants in accordance with the *Act*. That being said, the completion of the Notice does not meet the requirements of section 49(2)(c) of the *Act* as it lists an effective date when the tenant must move out as being August 31, 2015. That effective date is 13 months prior to the end of the fixed term tenancy agreement and is in breach of section 49(2)(c) of the *Act*.

Effective Date

The undisputed evidence was that on May 24, 2014 the parties entered into a written mutual agreement to extend the fixed term tenancy to a period starting June 1, 2015 and ending August 1, 2016. Therefore, the Effective Date of the Notice automatically corrects to **August 1, 2016** pursuant to section 53 of the *Act*.

Good Faith

Where a 2 Month Notice to End Tenancy comes under dispute, the Landlord has the burden to meet or satisfy the two part test as set forth under the Act and the *Residential Tenancy Policy Guideline 2*.

While I recognize that there are occasions in which a circumstance may change with the passage of time. Such as in this case with the Landlord changing his travel plans and experiencing some health issues. However, after considering the Notice on its merits I do not find the issuance of the Notice was driven solely by the Landlord's medical situation.

I accept the Tenants' submission that there is evidence of an ulterior motive for ending this tenancy. I do not find it a mere coincidence that the Notice was issued on the same day the Landlord filed a cross application against the Tenants' first application for Dispute Resolution. Rather, I conclude that on a balance of probabilities the Notice was issued in retaliation to the Tenants' request to have their prepaid rent returned in accordance with the *Act*.

Based on the above, I find the Landlord provided insufficient evidence to meet the two part test to uphold the 2 Month Notice to end tenancy. Accordingly, I find in favor of the Tenant's application and I cancel the 2 Month Notice to end tenancy issued June 8, 2015.

The Filing Fee

The Tenant has succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee, pursuant to section 72(1) of the *Act*.

Conclusion

The Tenant has been successful with their application. The 2 Month Notice to end tenancy issued June 8, 2015 was cancelled and the Tenant was awarded recovery of her \$50.00 filing fee. This tenancy remains in full force and effect until such time as it is ended in accordance with the *Act*.

The Tenant has been issued a Monetary Order for **\$50.00**. This Order is legally binding and must be served upon the Landlord. The Tenant may choose to recover this onetime award by deducting the \$50.00 from any future rent payment.

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: August 18, 2015

Residential Tenancy Branch

