



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNL, MNDC, RP, FF

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause, undated, with an effective move-out date of December 4, 2015 ("1 Month Notice"), pursuant to section 47;
- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property, dated November 30, 2015 ("2 Month Notice"), pursuant to section 49;
- a monetary order for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- an order requiring the landlord to make repairs to the rental unit, pursuant to section 33;
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord's realtor, "witness JR," testified on behalf of the landlord at this hearing. The landlord's other realtor, "AM," was supposed to testify at this hearing but he did not provide any testimony and only observed the hearing.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package ("Application"). In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's Application.

The landlord testified that she did not submit any written evidence for this hearing, confirming that she was not required to do so.

The tenant confirmed receipt of the landlord's 2 Month Notice on November 30, 2015, by way of service to his girlfriend who was residing in the rental unit with him. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlord's 2 Month Notice on November 30, 2015.

During the hearing, the landlord made a verbal request for an order of possession if the tenant's Application to cancel the 2 Month Notice was dismissed.

Preliminary Issue – Landlord's 1 Month Notice

At the outset of the hearing, the landlord testified that she was not pursuing an eviction of the tenant on the basis of the landlord's 1 Month Notice. The 1 Month Notice states that the "*tenant knowingly gave false information to prospective tenant or purchaser of the rental unit/site or property/park.*" Accordingly, I advised the landlord that her 1 Month Notice was cancelled and of no force or effect.

Preliminary Issue – Severing Portions of the Tenant's Application

Rule 2.3 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* states that if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated claims contained in a single application with or without leave to reapply.

I advised both parties that the central issue at this hearing was whether this tenancy was continuing. The remaining portions of the tenant's Application are unrelated to the Application to cancel the 2 Month Notice. At the conclusion of this hearing, I advised both parties that the remaining portions of the tenant's Application were dismissed with leave to reapply. These include the tenant's Application for a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement and for an order requiring the landlord to make repairs to the rental unit. I notified the tenant that he would be required to file a new application and pay another filing fee if he wished to pursue the above relief further. Both parties confirmed their understanding of the above.

Preliminary Issue – Landlord's Application and Future Hearing based on the 2 Month Notice

The landlord stated that she filed her own application to obtain an order of possession based on the 2 Month Notice, as well as other monetary claims, the file number of which appears on the front page of this decision. The hearing is scheduled for February 17, 2016 at 1:30 p.m. The landlord confirmed that she filed her application on January 5, 2016, less than two weeks prior to this hearing on January 13, 2016, and that she was advised by the RTB that it was too late for her application to be joined and heard at the same time as this hearing. The landlord confirmed that she had not yet served the application including a purchase agreement for the rental unit, upon the tenant, as of the date of this hearing. The tenant confirmed that he did not receive the landlord's application or the purchase agreement.

During this hearing, I asked both parties whether they wished to deal with the landlord's application today at this hearing but the tenant confirmed that he did not have notice of the landlord's application, he had not received her application or written evidence and was not prepared to respond to her application at this hearing. During the hearing, I advised both parties that they would be required to attend the hearing on February 17, 2016 at 1:30 p.m., as I was not prepared to deal with the landlord's application at this hearing, as the tenant was not given any notice or served with any of the landlord's documents so he could not properly respond to her claims. Both parties confirmed their understanding of the above and their intention to attend the upcoming hearing.

I further find that it would be prejudicial to both parties to adjourn the tenant's Application to be heard together with the landlord's application on February 17, 2016. The landlord confirmed that the purchaser of the rental unit would be taking possession of the rental unit on February 1, 2016 and I find that an expedient decision regarding the 2 Month Notice needs to be made at this hearing and before that date.

I also find that it would be prejudicial to the tenant to delay his hearing to February 17, 2016 in order to allow the landlord's written evidence supporting her application to be considered together with the tenant's Application. The landlord did not submit a copy of a purchase agreement to the tenant prior to this hearing or in response to the tenant's Application, despite having ample time to do so. The landlord chose not to submit written evidence for this hearing. I find that delaying the tenant's hearing in order to accommodate the landlord's lateness in submitting evidence would be unfair and prejudicial to the tenant.

Therefore, I did not adjourn the tenant's Application to be heard together with the landlord's application on February 17, 2016.

Issues to be Decided

Should the landlord's 2 Month Notice to be cancelled? If not, is the landlord entitled to an Order of Possession?

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

Background and Evidence

While I have turned my mind to the documentary evidence provided by the tenant for this hearing, and the testimony of both parties and witness JR, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claims and my findings are set out below.

Both parties agreed that this month-to-month tenancy began on January 18, 2014. Monthly rent in the amount of \$1,500.00 is payable on the 7th day of each month. A security deposit of \$750.00 was paid by the tenant and the landlord continues to retain this deposit. A copy of the written tenancy agreement was provided for this hearing. The tenant continues to reside in the rental unit.

The 2 Month Notice, which has an effective date of January 31, 2016, indicates the following reason for ending this tenancy:

- *All of the conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.*

The landlord testified that she sold this rental unit, which is a house, on November 6, 2015. The landlord stated that the purchaser intends to move into the rental unit on February 1, 2016. She maintained that in the purchase agreement, dated November 18, 2015, one of the subject conditions was removed, indicating that the purchaser wanted to occupy the rental unit. She explained that she did not provide this agreement to the tenant or the RTB for this hearing because she submitted it for her own upcoming hearing. Witness JR testified that he asked the tenant verbally when he could leave the rental unit and told him that the purchaser wanted to move in. The tenant denied that he was informed that the purchaser wanted to move into the rental unit, stating that he was only asked when he could move out.

The tenant disputes the landlord's 2 Month Notice. He stated that he questions whether the rental unit is actually sold because there is no "sold" sign outside of his unit. The

landlord stated that the decision to have a “sold” sticker on a “for sale” sign is up to the realtor and does not demonstrate whether a unit has been sold or not. The tenant provided a copy of an MLS listing indicating that the rental unit was sold as of November 6, 2015 and the landlord confirmed that this was sufficient to show the sale of the property. The tenant maintained that the landlord did not serve him with a written letter from the purchaser indicating his or her intention to move in to the rental unit.

The tenant stated that the landlord’s 2 Month Notice was not issued in good faith. He indicated that the landlord has served him with two separate 1 Month Notices to End Tenancy for Cause and she has a history of harassing him. The tenant claimed that the other neighbouring houses owned by the landlord are vacant and are not being sold by the landlord, only his rental unit is for sale. The tenant maintained that his next-door neighbour was evicted so the landlord could move in, but the landlord never did move in. The landlord denied this, stating that the other tenant was evicted for breach of by-laws not because of her intention to move in. The tenant explained that the landlord wants to evict him in order to get a higher rent amount, as she has previously tried to negotiate obtaining \$2,100.00 per month, as per past RTB decisions.

Analysis

I find that the tenant filed his Application to dispute the landlord’s 2 Month Notice within 15 days of receiving it on November 30, 2015, as per section 49(8) of the *Act*. The tenant first filed his Application on November 13, 2015. He attempted to file another application on December 15, 2015 in order to dispute the 2 Month Notice but he was told by an RTB staff member on December 17, 2015, that he was required to amend his original application filed on November 13, 2015, not to file a separate application. The RTB then closed his separate application. The tenant produced a copy of the email from the RTB staff member confirming the above information. The tenant then amended his Application on December 23, 2015 to dispute the 2 Month Notice and it was subsequently filed on December 29, 2015. I accept that the tenant’s attempt to dispute the 2 Month Notice by filing a new application on December 15, 2015, is within 15 days of November 30, 2015 and that it was only because an RTB staff member told the tenant to amend his application and closed his file, that the tenant’s amendment was delayed to December 29, 2015. Therefore, as I have found that the tenant applied to dispute the notice in time, the burden of proof, on a balance of probabilities, falls upon the landlord to justify the reason indicated in the 2 Month Notice.

As per section 49(5)(b) and (c) of the *Act*, the landlord may only issue a 2 Month Notice for a valid reason, once “all the conditions on which the sale depends have been satisfied, and the purchaser asks the landlord, in writing, to give notice to end the

tenancy..." I find that the landlord failed to provide any documentary evidence that the purchaser asked the landlord, in writing, to give notice to end the tenancy. The landlord testified that she did not receive a written notice from the purchaser to move into the unit.

While I do not disbelieve the landlord's and witness JR's testimony at this hearing, that the purchaser intends to move into the rental unit, oral evidence provided in the place of available documentary evidence is given less weight as it is inherently less reliable. This is especially the case where documentary evidence is available that could easily substantiate the landlord's case: the best evidence available should be provided. The landlord had sufficient time to prepare for this hearing, as the tenant's amended application was filed on December 29, 2015. The landlord should have known to obtain this written information from the purchaser because it is clearly stated in the reason on the 2 Month Notice that she issued to the tenant. It is also a requirement of section 49(5)(b) of the *Act*.

The landlord stated that she filed a future application for an order of possession based on the 2 Month Notice and she included the purchase agreement. I did not have this agreement at this hearing. However, even if I did, it does not satisfy the above requirement of the purchaser providing notice in writing to end the tenancy and move into the rental unit. Therefore, the landlord did not meet the required test and I do not need to examine the tenant's allegations regarding whether the 2 Month Notice was issued in good faith.

On a balance of probabilities and for the reasons stated above, I allow the tenant's Application to cancel the landlord's 2 Month Notice. I deny the landlord's request for an order of possession based on the 2 Month Notice. The landlord's 2 Month Notice, dated November 30, 2015, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

As the tenant was successful in this Application, I find that he is entitled to recover the \$50.00 filing fee from the landlord.

Conclusion

The tenant's application to cancel the landlord's 2 Month Notice, dated November 30, 2015, is allowed. The landlord's request for an order of possession based on the 2 Month Notice is denied.

The landlord's 1 Month Notice, undated, and the landlord's 2 Month Notice, dated November 30, 2015, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

I order the tenant to deduct \$50.00 from a future rent payment at the rental unit in full satisfaction of the monetary award for the filing fee granted to him at this hearing.

The tenant's application for a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement and for an order requiring the landlord to make repairs to the rental unit, is dismissed with leave to reapply.

The hearing for the landlord's application, the file number of which appears on the front page of this decision, is still proceeding on February 17, 2016 at 1:30 p.m.

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 20, 2016

Residential Tenancy Branch

