



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT CNL

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Tenant on October 14, 2016. The Tenant filed seeking more time to make her application and an order to cancel a 2 Month Notice to end tenancy for landlord's use of the property.

The hearing was conducted via teleconference and was attended by the Landlord, the Landlord's Agent, and the Tenant. Each person gave affirmed testimony. 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.

Submissions on behalf of the Landlord were made by the Landlord and his Agent (the Landlords). Therefore, for the remainder of this decision, terms or references to the Landlord importing the plural shall include the singular and vice versa, except where the context indicates otherwise

The Landlord confirmed receipt of the Tenant's application for Dispute Resolution and notice of hearing documents. The Landlord affirmed that he served the Tenant with copies of his evidence when he posted it to her door on October 25, 2016. The Landlord stated he took a picture of the package taped to the door and it was served in the presence of a witness.

The Tenant interrupted the Agent's testimony to say she did not receive anything from the Landlord. After consideration of the foregoing, I favored the Landlord's submissions that he served the Tenant with his evidence by posting to her door. The evidence consisted of the 2 Month Notice; the proof of service document for the Notice; the tenancy agreement; and a type statement which was the same evidence provided in the Agent's oral submissions.

The Tenant confirmed the terms of the tenancy agreement, as per the copy provided in the Landlord's evidence, and provided a copy of the 2 Month Notice as her evidence. Therefore, as the documentary evidence was confirmed in the Tenant's oral submissions, I considered all documentary evidence submitted by both parties.

Both parties were provided with the opportunity to present relevant oral evidence, to ask questions, and to make relevant submissions. Following is a summary of those submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Has the Landlord proven the requirements to uphold the 2 Month Notice?

Background and Evidence

The Tenant entered into a fixed term tenancy agreement which began on July 1, 2015 and switched to a month to month tenancy after June 30, 2016. Rent of \$900.00 was payable on the first of each month. On June 30, 2015 the Tenant paid \$450.00 as the security deposit.

On September 24, 2016 the Tenant was served a 2 Month Notice to end tenancy when hit was posted to her door. As per the evidence submissions, the September 24, 2016, 2 Month Notice was issued on the prescribed form pursuant to the *Residential Tenancy Act* (the *Act*), s. 49. That Notice listed an effective date of 01 Dec 2016 and the following reason for issuing the Notice:

The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child or the parent or child of that individual's spouse)

The Tenant confirmed receipt of the 2 Month Notice on September 24, 2016. She initially testified that she could not file her application for Dispute Resolution because her car had broken down and she could not arrange a ride to go to the Residential Tenancy Branch. Then the Tenant testified she had made two attempts to file her application for Dispute Resolution on line; however, her application kept getting rejected. She said she then attended the Residential Tenancy Branch (RTB) on October 14, 2016 and attempted to file on-line using the RTB computers and it was rejected again. She then completed a hand written application and submitted it on October 14, 2016. The Tenant was not able to testify as to the dates she first attempted to file her application on-line prior to attending the RTB.

Neither the Agent nor the Landlord made submissions regarding the date the Tenant filed her application or the Tenant's request for more time to dispute the 2 Month Notice.

The Agent submitted the Landlord needed the rental unit for his personal use. He has informed the Landlord of the consequences if he does not use the property for his own use for to six months. The rental unit is located in the basement of the Landlord's house where the Landlord; his wife; daughter; and in-laws reside. The Landlord submitted that in addition, his grown children and their family will be coming to stay with him over the Christmas holidays so he needs all of the space for his family.

The Tenant testified the Landlord told her in August 2016 that she had to move out in three weeks because he needed the suite for his wife's family. Then when the Tenant failed to pay her September 1, 2016 rent on time the Landlord served her with a 10 Day Notice to end tenancy for non-payment of rent.

The Tenant stated she did not dispute the 10 Day Notice and did not know when her September 2016 rent had been paid. She stated that she had made an application for income assistance and requested that her payment be mailed directly to the Landlord. She then left the Province a day or two after the 10 Day Notice was served to her. She said that when she returned home her rent had been paid by "the Ministry" and she received the 2 Month Notice a couple of days later.

The Landlords stated a \$660.00 cheque was sent to the Landlord by "the Ministry" for partial payment of the Tenant's rent sometime in mid-September 2016. The Landlord received full payment of rent for October and November 2016 rent; however, no payment has been received for December 2016 rent. The Landlord testified he had told the Tenant's Worker not to send him the December rent payment as they were proceeding with the 2 Month Notice.

The Agent testified that he informed the Landlord he could obtain an Order of Possession quicker based on the 10 Day Notice for non-payment of rent and that he would not have to pay the Tenant the compensation equal to one month. The Landlord stated that he did not want to proceed with the 10 Day Notice and chose to follow through with the 2 Month Notice because he was going to use the property for his family.

The Landlord disputed the Tenant's submissions and argued he did not ask the Tenant to move out so his wife's cousins could move into the unit. He asserted he has always wanted the space for his own use.

Analysis

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*. After careful consideration of the foregoing; documentary evidence; and on a balance of probabilities I find pursuant to section 62(2) of the *Act* as follows:

Section 66 of the *Residential Tenancy Act* allows for an extension to a time limit established by the *Act* but only in exceptional circumstance. The extension cannot be granted for a date after the effective date of the Notice.

The Landlords did not submitted arguments regarding the Tenant filing her application to dispute the 2 Month Notice beyond the 15 day time frame. Therefore, I gave the Tenant the benefit of the doubt, accepted the Tenant's submissions about having problems submitting her application on-line, and proceeded to hear the merits of the 2 Month Notice.

Section 49 (3) of the *Act* 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.

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.

Where a 2 Month Notice to End Tenancy comes under dispute, the Landlord has the burden to meet or satisfy a two part test as set forth and listed above. I concur with this policy and find it relates to the matters currently before me.

Upon review of the 2 Month Notice to End Tenancy issued September 24, 2016, I find that Notice to be completed in accordance with the requirements of section 52 of the *Act* and I find that it was served upon the Tenant in a manner that complies with section 89 of the *Act*.

I find there was sufficient evidence before me to support this tenancy should end in accordance with the 2 Month Notice. There was evidence, albeit disputed testimony, that the Landlord wanted the property for his own use back in August 2016. In addition there was evidence of an undisputed 10 Day Notice that the Landlord could have sought an Order of Possession under. That being said, the Landlord has held firm with his convictions that he required the rental unit for his own personal use and for his grown children to occupy when they visit. The Landlord was also aware that he had to provide the Tenant with compensation equal to one month's rent and still wished that the 2 Month Notice be upheld instead of the 10 Day Notice. I found the aforementioned lent credibility to the Landlord's submissions.

Based on the foregoing I find there to be sufficient evidence to uphold the 2 Month Notice issued September 24, 2016. Accordingly, I dismiss the Tenant's application, without leave to reapply.

Section 55(1) of the *Act* stipulates that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Although the Tenant has paid November 2016 rent, that payment does not extend the effective date of the Notice which was December 1, 2016. As such, I have issued the

Landlord an Order of Possession effective **2 Days upon service to the Tenant**. In the event that the Tenant does not comply with this Order it may be filed with the Supreme Court and enforced as an Order of that Court.

Conclusion

The Tenant's request to cancel the 2 Month Notice was dismissed, without leave to reapply; and the Landlord was issued an Order of Possession effective 2 Days upon service to the Tenant.

This decision is final, legally binding, and 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: December 05, 2016

Residential Tenancy Branch