



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNL, MT, FF

Introduction

This hearing was convened by way of conference call in response to a Tenant's Application for Dispute Resolution (the "Application") made on January 6, 2017 for the following issues:

- to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property (the "2 Month Notice");
- for more time to make the Application to dispute the 2 Month Notice;
- to dispute an additional rent increase;
- for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement;
- to make repairs to the rental unit;
- to return the Tenant's personal property;
- to suspend or set conditions on the Landlord's right to the enter the rental unit;
- to authorize the Tenant to change the locks to the rental unit;
- to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided; and,
- to recover the filing fee from the Landlord.

On January 13, 2017, the Tenant amended the Application to remove several issues to be determined in this hearing. The amendment sought to limit the Application to only hear the Tenant's request to cancel the 2 Month Notice and to recover the filing fee.

The Tenant, the Tenant's legal advocate, and the Landlord appeared for the hearing and provided affirmed testimony. The Landlord confirmed receipt of the Tenant's Application and the Tenant's amended Application. Both parties acknowledged receipt of 14 pages of documentary evidence from the Landlord and 22 pages of documentary evidence from the Tenant which was served prior to the hearing. The hearing process was explained to the parties and they had no questions about the proceedings.

Preliminary Issues and Findings

At the start of the hearing, the Tenant confirmed that she had received the 2 Month Notice by personal service from the Landlord on December 17, 2016. As a result, pursuant to the 15 day time limit provided for by Section 49(8) of the Act, the last day for the Tenant to file her Application to dispute the 2 Month Notice would have been January 1, 2017.

The *Interpretation Act* allows time limits to be extended to the next day if the last day falls on a day that a business office is closed. Therefore, as the Residential Tenancy Branch (RTB) office was closed on January 1 and on January 2, 2017, I find the Tenant had until January 3, 2017 to make the Application. However, the Application was stamped by the RTB as being made by the Tenant on January 6, 2017, which is outside of the 15 day time limit.

When the Tenant elected the reasons to be decided on her Application, she requested more time to make the Application, the code marked MT on the Application. This reason was not removed from the amended Application. Therefore, I continued to consider the Tenant's request to make her Application outside of the allowable time limit.

The Tenant testified that she attended the RTB office on January 3, 2017 and was informed that to file the Application she would need to pay a \$100.00 filing fee. The Tenant stated that she was in financial difficulties and when she explained this to the RTB staff, they informed her that she could apply to have her fee waived. The Tenant stated that the RTB staff told her that she had until January 6, 2017 to file the Application.

As a result, I turned to the electronic records relating to this file. These state that the Tenant attended the RTB office on January 3, 2017 and was informed that an application is only considered to have been made when the applicant pays the filing fee or a fee waiver is approved. The notes show the Tenant made attempts to obtain documents to support her request to have the filing fee waived on January 3, 2017 but these were eventually not approved. The notes state that the Tenant was informed that corrections were required on the Application and that these should be corrected by January 6, 2017.

The Tenant disputed that she was told that January 3, 2017 was her last day to file the Application and that she was not given any indication that providing her fee waiver documents after January 3, 2017 would result in her failing to make the Application. The Tenant submitted that had she known this then she would have not proceeded with

paying the filing fee on January 6, 2017 and that she should have had her Application rejected by the RTB.

The Tenant stated that when she supplied her fee waiver documents to the RTB office on January 3, 2017, her understanding was that her Application had been made. It was only after this that she learnt that the fee waiver information she had supplied was being rejected and that she had until January 6, 2017 to provide further documentation.

The Tenant stated that she was not aware that she was filing outside of the 15 day time limit and that she was left with the impression that her deadline was January 6, 2017 to complete the Application from the RTB staff conversation.

The Tenant's legal advocate stated that she was only retained by the Tenant after the Tenant had filed the Application. The Tenant's legal advocate pointed to Policy Guideline 36 to the Act which provides for criteria an Arbitrator may consider when determining exceptional circumstances for extending a time period. The Tenant's legal advocate pointed to the fact that the Landlord's 2 Month Notice had not been issued in good faith and that it was an effort by the Landlord to end the tenancy as means to obtain more rent for which they had evidence of.

When the Tenant was asked why she had left it to the last day of the 15 day time limit to dispute the 2 Month Notice, she explained that the holiday season made it difficult because the RTB office was closed on several days of the time limit.

In making my decision on the Tenant's request for more time to file the Application, I take into consideration the following provisions. Section 49(9) of the Act states that a tenant who does not make an Application within 15 days to dispute a 2 Month Notice is conclusively presumed to have accepted that the tenancy ends on the effective vacancy date of the 2 Month Notice and must vacate the rental unit by that date. However, Section 66(1) of the Act allows an Arbitrator to extend this time limit if there are exceptional circumstances.

Section 59(2) (c) of the Act provides that an Application must be accompanied by the prescribed fee. In addition, Rule 2.6 of the Dispute Resolution Rules of Procedure states that an Application has been made when the filing fee is paid or all the documents for a fee waiver are submitted to the RTB. In addition, I also take into consideration the exceptional circumstances criteria listed in Policy Guideline 36 as follows:

- the party did not wilfully fail to comply with the relevant time limit
- the party had a bona fide intent to comply with the relevant time limit

- reasonable and appropriate steps were taken to comply with the relevant time limit
- the failure to meet the relevant time limit was not caused or contributed to by the conduct of the party
- the party has filed an application which indicates there is merit to the claim
- the party has brought the application as soon as practical under the circumstances

Based on the foregoing, I grant the Tenant's request for more time to cancel the 2 Month Notice. I make this finding because there is sufficient evidence before me that the Tenant attended the RTB office on the last day within the correct time limit provided for by the Act and attempted to diligently pursue her Application in the absence of legal representation which the Tenant only retained after January 6, 2017. Common law has established that when people are working through administrative processes such as these, without legal representation, consideration must be given to these limitations.

Even though the Tenant left it until the last day of the time limit provided for by the Act, I accept that this was a busy time of the year during which the RTB office was closed on several days throughout the holiday season. Although the electronic notes made by the RTB staff indicate the Tenant was informed of her requirement to file her Application on January 3, 2017, I accept the Tenant's understanding was that she had already made the Application on January 3, 2017 with supporting evidence to waive the filing fee.

I further accept that the Tenant misunderstood the January 6, 2017 date as the last day for her to submit documents to have her filing fee waived albeit that January 6, 2017 was the date the Tenant was to make corrections to the Application.

I also find that the Tenant had a bona fide intent to file her Application on January 3, 2017 and the circumstances that occurred over the next three days thereafter do not suggest that there was any wilful or intentional neglect by the Tenant to thwart the process. As a result, I now make findings on the 2 Month Notice as follows.

Issue(s) to be Decided

- Has the Landlord served the 2 Month Notice to the Tenant in good faith?
- Should the Notice be cancelled?

Background and Evidence

The parties agreed that this oral tenancy started on August 1, 2015 on a month to month basis. Monthly rent is payable by the Tenant in the amount of \$850.00 on the first

day of each month. No security deposit was paid for this tenancy and the Tenant is not in any rental arrears. The Tenant described the rental suite she was renting as being half of the basement portion of a residential home where the Landlord resides in the upper portion.

The Landlord testified that he served the Tenant with the 2 Month Notice for the reason indicated on page two: *the Landlord has all the necessary permits and approvals required by law to convert the rental unit into a non-residential use*. The Landlord explained that he had obtained a business licence to conduct translation services from his residential property. The Landlord provided a copy of the business licence into evidence which is dated as being issued on December 2, 2016. The Landlord testified that he is also in the process of obtaining a permit to operate a bed and breakfast hotel from the residential property but needs to make the basement portion of the residential property compliant with the city zoning requirements.

The Landlord testified that he is serious about these businesses as he has undergone a lot of training and incurred costs to set these up. The Landlord provided his credentials to support his good faith intention. The Landlord testified that he intends to run both businesses at the same time but cannot apply for the permit for the bed and breakfast until the basement rental suite rented by the Tenant is vacated.

The Tenant disputed the Landlord's reasoning to end the tenancy. The Tenants' legal advocate argued that the Landlord is attempting to use the 2 Month Notice to end the tenancy so that he can re-rent the basement portion at a much higher cost in a difficult rental market where there is much demand and low supply. The Tenant explained that the Landlord can get double the amount of rent she is currently paying and this is the motivation behind ending the tenancy.

The Tenant's legal advocate pointed me to four emails the Landlord had sent to the Tenant prior to the issuing of the 2 Month Notice. The first email is dated October 19, 2016 and states in part:

"That is what in this email I am writing for: Is there a possibility that you start to look for a new place to live for next month on, so that we could rent the basement as a whole thing, to get more rent and lessen our financial pressure?"

[Reproduced as written]

The Tenant explained that the second email sent by the Landlord on August 29, 2016 requested the Tenant to rent the entire basement portion for a rent of \$1,600.00 or get a tenant to share this cost with her.

The Tenant then referred to a third email sent by the Landlord on October 12, 2016 in which the Landlord then suggests that the tenancy should end because the Landlord needs the basement living room as the office for his translation service. The Tenant stated that in this email the Landlord was looking to mutually agree to end the tenancy so that he could make more money running a translation service from the rental suite. The Tenant testified that she did not agree to any mutual agreement to end the tenancy.

The Tenant then referred me to a fourth email provided into evidence which is dated November 16, 2016 in which the Landlord again suggests that the tenancy should be ended with a 2 Month Notice because the Landlord intends to run his bed and breakfast business.

The Tenant's legal advocate submitted that the Landlord has not even established the bed and breakfast business or got any permits and approvals for this. As for the translation business the Landlord relied on, the Tenant's legal advocate submitted that this type of business is rarely conducted in person and is done mainly on-line with clients submitting documents for translation.

The Tenant's legal advocate stated that there is not sufficient parking or access around the rental unit to run a business from the rental property. In addition, there is not sufficient evidence to show that the Landlord cannot use his own property, which is above the basement suite, to run the translation business from as it only requires one room, of which the Landlord has several bedrooms. The Tenant submits that the 2 Month Notice was not given in good faith and the Landlord's motive behind wanting to end the tenancy is purely financial.

The Landlord disputed this stating that the translation business cannot be all done on-line and that the access to the property will not hinder the business.

Analysis

Having examined the 2 Month Notice, I find it was issued to the Tenant on the approved form and contained the correct information as required by the Sections 49(7) and 52 of the Act. When tenant is served with a 2 Month Notice pursuant to Section 49(6) (f) of the Act, and that reason for ending the tenancy is disputed by the tenant, the onus is on the landlord to establish that it was issued in accordance with the Act. In particular Section 49(6) (f) of the Act requires a landlord to intend to occupy the rental unit in good faith. Residential Tenancy Branch Policy Guideline 2 provides detailed guidance on the good faith requirement. It states in part:

“Good faith is an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage.

A claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End the Tenancy. This might be documented through: a Notice to End Tenancy at another rental unit; an agreement for sale and the purchaser’s written request for the seller to issue a Notice to End Tenancy; or a local government document allowing a change to the rental unit (e.g., building permit) and a contract for the work.”

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 they do not have an ulterior motive for ending the tenancy.”

[Reproduced as written]

In this case, I must decide whether the Landlord has met the good faith burden to prove the tenancy should end as the good faith intention was disputed by the Tenant.

After careful consideration of the parties’ evidence, I make the following findings. I find the email evidence provided by the Tenant is sufficient evidence to suggest that the Landlord has an ulterior motive for ending the tenancy. In this case, I find the Landlord sent two emails prior to the issuing of the 2 Month Notice and prior to informing the Tenant that he wanted the rental property for a non-residential use. I find that these emails are sufficient and clear evidence that the Landlord was seeking to end the tenancy by mutual agreement. I find that this evidence is sufficient to show that the Landlord wanted to end the tenancy based on financial grounds. I find that it was only after the Tenant disagreed with agreeing to end the tenancy mutually did the Landlord begin suggesting that he would be applying for a translation services business to operate at the address.

Furthermore, I find the submission of the Landlord's business licence to operate a translation business from the rental property does not itself alone suggest that the tenancy must be ended. I find the Landlord failed to provide sufficient evidence that the translation business can only be conducted from the basement rental portion that the Tenant occupies and why it cannot be operated from the un-rented portion of the basement or from the Landlord's residence above the basement. In addition, the Landlord has not yet obtained any permit or approval for the bed and breakfast business.

Based on the foregoing, I find the 2 Month Notice dated December 17, 2017 must be cancelled and the tenancy will resume until it is ended in accordance with the Act.

Since the Tenant has been successful with the Application, I also allow the Tenant to recover the filing fee of \$100.00. Pursuant to Section 72(2) (a) of the Act, the Tenant may achieve this relief by deducting \$100.00 from her next installment of rent. The Tenant may want to provide a copy of this Decision when making the reduced rent payment.

Conclusion

The Tenant's Application to cancel the 2 Month Notice is granted. The tenancy will continue. The Tenant is granted recovery of the filing fee from her next installment of rent. This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: February 03, 2017

Residential Tenancy Branch