



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for landlord's use of property; for an order that the landlord comply with the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

The tenant and the landlord attended the hearing, as well as the landlord's spouse, and all parties gave affirmed testimony. The parties were given the opportunity to question each other, and all evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established that the 2 Month Notice to End Tenancy for Landlord's Use of Property was issued in accordance with the *Residential Tenancy Act*, specifically with respect to the date of issuance, the effective date of vacancy, and good faith intent?
- Should the landlord be ordered to comply with the *Act*, regulation or tenancy agreement, and more specifically with respect to ending the tenancy in accordance with the *Act*?

Background and Evidence

The landlord's spouse testified that the tenant moved into the rental unit about 3 years ago and the landlord and spouse purchased the rental property in August, 2016. The landlord's spouse testified that the tenancy agreement had a fixed term, but does not recall till when, however it reverted to a month-to-month tenancy and the tenant still resides in the rental unit. Rent in the amount of \$750.00 per month is payable on the 1st day of each month, and there are no rental arrears. At the outset of the tenancy the tenant paid a security deposit to the previous landlord in the amount of \$375.00 which is

now held in trust by the current landlord. The rental unit is a basement suite, and the landlord and spouse live in the upper level of the home.

On January 13, 2017 the landlord personally served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use of Property, a copy of which has been provided by the tenant. It is dated March 13, 2017 and contains an effective date of vacancy of March 14, 2017. The reason for issuing it states: "The rental unit will be occupied by the landlord or the landlord's close family member (parent or child, or the parent or child of that individual's spouse)." The landlord's spouse testified that his daughters reside in the USA and want to move to the City the landlord resides in. One daughter is moving in for a 3 month vacation and the other daughter will continue to work in the USA and go back and forth every day.

The notice contains an error in the date issued, which was an honest mistake. It ought to be deemed to be dated January and not March. The effective date of vacancy ought to be changed to March 31, 2017. The proper form was used, and only the dates are incorrect.

The landlord testified that the tenant's behaviour is not good with the landlord, and the tenant agreed to move out at the end of March, 2017. The landlord agreed, but the tenant didn't cooperate.

The tenant testified that he tried to talk to the landlord multiple times about incorrect forms and how they are filled out.

The landlord gave the tenant a 1 Month Notice to End Tenancy, on or about January 17, 2017, but not in the approved form. A copy has been provided and it is dated January 14, 2017, signed by the landlord, and states: "This one month's notice is being served with the purpose to notify regarding the end of tenancy effective February 13, 2017." The tenant told the landlord that it wasn't effective and printed a 2 Month Notice to End Tenancy for Landlord's Use of Property as well as other documented information from the Residential Tenancy Branch website, highlighted certain portions, and gave the documents to the landlord. Then the landlord served the 2 Month Notice to End Tenancy for Landlord's Use of Property, back-dating the day, and showing an incorrect month in the date of issuance. He received it sometime in January, 2017 but does not recall the date. Also, the form gives the tenant 1 day's notice to move out.

The landlords moved in about the middle of August, 2016 and when the tenant paid rent September 1, 2016, the landlord said rent was \$850.00. The tenant disagreed, and the landlord accepted the \$750.00. Rent has been paid in full to date. Then the landlord tried to serve the tenant with something saying rent would be increased, and wanted the

tenant to sign a 1 year tenancy agreement. The landlord has been trying to increase rent since they purchased the home.

The tenant further testified that the landlord have one daughter living with them who has been since the landlords purchased the home. The tenant does not believe the landlords intend to use the rental unit for the purpose set out in the notice.

The tenant did not agree to move out on March 31, 2017, or at all. The landlord kept saying, "You're agreeing," but the tenant only agreed to take the notice, but was not agreeing to it. The landlord kept trying to force the tenant to agree.

The tenant seeks an order cancelling the 2 Month Notice to End Tenancy for Landlord's Use of Property and an order that the landlord comply with the *Residential Tenancy Act* by ending the tenancy only in accordance with the *Act*, as well as recovery of the \$100.00 filing fee.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was issued in accordance with the *Residential Tenancy Act*, which can include the reasons for issuing it.

The tenant disputes the notice on the grounds that the date of issuance and the effective date of vacancy are incorrect, and that the address of the landlord is missing in the form, and that the tenant does not believe the landlord intends to use the property for the purpose contained in the notice.

With respect to the dates, the *Residential Tenancy Act* states that incorrect effective dates contained in a landlord's notice are corrected to the nearest date that complies with the law. It also states that the effective date must be no earlier than 2 months after the date the tenant receives the notice and must be received by the tenant the day before the day rent is payable under the tenancy agreement.

The landlord's position is that the date of issuance is an honest error and that it was served on the tenant in January, not March, and therefore the month shown is incorrect. That is corroborated by the tenant's testimony that he received it January but does not recall the day. In any event, the landlord didn't dispute the tenant's testimony that the landlord had served 1 month notice to end the tenancy on January 14, 2017 and the tenant provided the landlord with a blank form to use, then the tenant received the 2 Month Notice to End Tenancy for Landlord's Use of Property. Therefore, I find that the day of issuance is not correct or the month of issuance, or the effective date of vacancy.

The *Act* specifies that:

52 In order to be effective, a notice to end a tenancy must be in writing and must

(a) be signed and dated by the landlord or tenant giving the notice,

(b) give the address of the rental unit,

(c) state the effective date of the notice,

(d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,

(d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and

(e) when given by a landlord, be in the approved form.

There is nothing in the *Act* requiring the landlord's address to be set out in the notice to end the tenancy, only the address of the rental unit. I find that the landlord has complied and the notice is in the approved form.

The most substantive issue before me is the reason for ending the tenancy. A landlord must be able to establish good faith intent to use the rental unit for the purpose contained in the notice. Because one of the landlord's daughters will only be on vacation for a 3 month period, I find that is not enough to warrant ending a tenancy. If a landlord does not use the rental unit for that purpose commencing within a reasonable time after the effective date of the notice and for at least 6 months, the tenant would be at liberty to apply for monetary compensation in the amount of double the monthly rent.

With respect to the other daughter, the landlord testified that she will continue to work in the USA and travel back to the rental home daily, and I question the distance issue which was not explained by the landlord or the landlord's spouse. However, the landlord testified that the tenant's behaviour is not satisfactory to the landlord, and that the tenant didn't cooperate with a promise to move out at the end of March. Further, the tenant testified that the landlord has continued to attempt to raise the rent contrary to the law and neither the landlord nor the landlord's spouse disputed that. There are too many variables concerning the reason the landlord wishes to end the tenancy. In the circumstances, I am not satisfied that the landlord has established good faith intent to use the rental unit for the purpose contained in the 2 Month Notice to End Tenancy for Landlord's Use of Property, and I cancel it.

The landlord may only serve a notice to end the tenancy in the following circumstances:

(ii) section 46 [*landlord's notice: non-payment of rent*];

(iii) section 47 [*landlord's notice: cause*];

(v) section 49 [*landlord's notice: landlord's use of property*];

Or unless the landlord and the tenant agree in writing to end the tenancy, and in all cases the landlord must be prepared to establish that the notice complies with the *Residential Tenancy Act*, and I order the landlord to comply.

Since the tenant has been successful with the application, the tenant is entitled to recovery of the \$100.00 filing fee and I order that the tenant be permitted to reduce rent for a future month by that amount or may otherwise recover it.

Conclusion

For the reasons set out above, the 2 Month Notice to End Tenancy for Landlord's Use of Property dated March 13, 2017 is hereby cancelled and the tenancy continues.

I hereby order the landlord to comply with the *Residential Tenancy Act* by ensuring that any notice to end the tenancy complies with the *Act*.

I further grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00 and I order that the tenant be permitted to reduce rent for a future month by that amount or may otherwise recover it.

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: February 17, 2017

Residential Tenancy Branch