



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, FF

Introduction

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

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice"), pursuant to section 49;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

KK, the landlord's daughter ('landlord') testified on behalf of her mother in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

The landlord confirmed receipt of the tenant's application for dispute resolution ('application'). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenant's application. As both parties confirmed receipt of each other's evidentiary materials, I find that these documents were duly served in accordance with section 88 of the *Act*.

As the tenant confirmed receipt of the 2 Month Notice on March 31, 2017, I find that this document was duly served to the tenant in accordance with section 88 of the *Act*.

Issues to be Decided

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

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

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

Background and Evidence

The landlord testified that this tenancy began 3 years ago with a different landlord. The current landlord took over this tenancy in August 2016 when the landlord purchased the home. This is now a month-to-month tenancy with monthly rent set at \$750.00. The landlord holds a security deposit of \$375.00, and the tenant continues to reside in the rental unit.

The landlord issued the 2 Month Notice, with an effective move-out date of May 31, 2017 for the following reason:

- 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 landlord provided the following background for why they had decided to issue the 2 Month Notice. They testified that the 2 Month Notice was issued as the landlord's daughter wanted to occupy the suite. This daughter currently resides, and works in Bellingham, Washington in the United States. This is the second 2 Month Notice issued as the first notice that was issued January 13, 2017 was cancelled by an Arbitrator on February 17, 2017, as the Arbitrator was not satisfied that the 2 Month Notice was issued in good faith.

The landlord maintains that the intent is still the same as before, which was for the daughter to move into the suite, and commute to and from Washington State for work. The landlord stated that this was only a 30 minute drive each way, and that the tenant wanted to move in as soon as possible.

The tenant testified that he did not believe that the landlord served this second 2 Month Notice in good faith, and believes that they simply wanted to evict him in order to increase the rent. He testified that this is the second notice after the first one was cancelled, and that there is a second suite next to his in the home that is currently vacant. He testified that the previous tenant in that suite was also given a 2 Month Notice, and that the landlord had approached him and the previous tenant next door to sign a new tenancy agreement with rent set at \$850.00 per month. When the current landlord took over the tenancy in August 2016, the landlord attempted to raise the rent to \$850.00 per month, which the tenant refused.

The tenant is also requesting an order for the landlord to comply with the *Act*. The tenant provided in evidence several handwritten notices to inspect his rental suite, with

no specific reasons provided on the notices. The tenant testified that the landlord was aggressive in their dealings with him, and he was told that he would be evicted.

The landlord disputed the tenant's testimony stating that they had never raised the rent, nor have they attempted to. The landlord explained that the other unit was vacant pending the other daughter's move from Florida in June 2017, and that daughter intended to occupy that suite. The landlord maintains that the inspection notices were valid as they were issued 24 hours in advance of entry.

Analysis

Subsection 49(3) of the *Act* sets out that a landlord may end a tenancy in respect of a rental unit where the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. The landlord states that her daughter intended to occupy the suite.

Residential Tenancy Policy Guideline 2: Good Faith Requirement When Ending a Tenancy states:

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

Although the landlord stated that they had issued the 2 Month Notice in order for the daughter to move into the suite, I find that the tenant had raised doubt as to the true intent of the landlord in issuing this notice. He gave undisputed sworn testimony that there was another vacant suite in the home, and that this was the second 2 Month Notice issued to him with the exact same reason provided. As the tenant raised doubt as to the landlord's true intentions, the burden shifts to the landlord to establish that they do not have any other purpose to ending this tenancy.

The landlord did not dispute the fact that the other suite was vacant pending the other daughter's move in June 2017, and despite the urgency that that was emphasized in this hearing, no explanation was provided for why the daughter from Washington could not occupy this vacant suite first.

I find that the landlord has not met their burden of proof to show that they issued the 2 Month Notice in good faith. I find that the testimony of both parties during the hearing raised questions about the landlord's' good faith. The landlord emphasized the urgency of the daughter's move, and yet did not provide the vacant suite to that daughter first, or a reason why this option was not pursued. In coming to this determination, I find that little seems to have changed since another arbitrator appointed under the *Act* cancelled the landlord's previous January 13, 2017 Notice to End Tenancy for Landlord's Use of Property on February 17, 2017. This is essentially a second attempt to end this tenancy for the same reason identified by the landlord.

As the good faith intention of the landlord was called into question, Residential Tenancy Policy Guideline 2 clearly states that "the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy". I find that there was no specific reason provided by the landlord to support why they required this particular suite when undisputed evidence was provided that another vacant suite remained available for this purpose.

I find that the landlord has not met their burden of proof to show that they do not have any other purpose in ending this tenancy. Based on a balance of probabilities and for the reasons outlined above, I find that the landlord has not met their onus of proof to show that the landlord, in good faith, requires the tenant to vacate this specific rental unit in order for the daughter to move in.

Accordingly, I allow the tenant's application to cancel the 2 Month Notice. The landlord's 2 Month Notice, dated March 31, 2017, is hereby cancelled and of no force and effect. This tenancy continues until it is ended in accordance with the *Act*.

The tenant also applied for an order for the landlord to comply with the *Act*, specifically for the landlord to provide proper notice before entering the suite. Section 29(1)(b) states that "at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information: (i) the purpose for entering, which must be reasonable; (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees.

Although the landlord's stated purpose (i.e., "to see the basement unit") was not very detailed, a landlord does have a right to conduct a monthly inspection of a rental unit as long as proper notice and reasons are given. Under these circumstances, I find that the landlord has not contravened section 29(1)(b) of the *Act*. I dismiss the tenant's application for the issuance of an order against the landlord, but remind the landlord that an inspection of this type can only occur once per month.

I find that the tenant is entitled to recovery of the filing fee.

Conclusion

The tenant's application to cancel the landlords' 2 Month Notice is allowed. The landlords' 2 Month Notice, dated March 31, 2017, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

I allow the tenant to implement a monetary award of \$100.00 for recovery of the filing fee, by reducing a future monthly rent payment by that amount. In the event that this is not a feasible way to implement this award, the tenant is provided with a Monetary Order in the amount of \$100.00, and the landlord must be served with **this Order** as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: May 24, 2017

Residential Tenancy Branch