



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF

Introduction

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

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property, dated April 24, 2017 ("2 Month Notice"), pursuant to section 49; and
- authorization to recover the filing fee for this application, 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. This hearing lasted approximately 50 minutes in order to allow both parties to fully present their submissions.

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

The tenant confirmed receipt of the landlord's 2 Month Notice on April 27, 2017, which the landlord confirmed was sent by registered mail to the tenant on April 24, 2017. 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 April 27, 2017.

Issues to be Decided

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

Is the tenant entitled to recover the filing fee for her application?

Background and Evidence

While I have turned my mind to the tenant's documentary evidence and the testimony of both parties, 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 to the following facts. This month-to-month tenancy began on February 1, 2008. Monthly rent in the current amount of \$863.00 is payable on the first day of each month. A security deposit of \$388.00 was paid by the tenant and the landlord continues to retain this deposit. The tenant continues to reside in the rental unit. A written tenancy agreement was signed by the tenant and the landlord "owners" and a copy was provided for this hearing. The landlord at this hearing is a property manager agent for the landlord owners.

The tenant seeks to cancel the landlord's 2 Month Notice and to recover the \$100.00 filing fee paid for her application.

The tenant provided a copy of the landlord's 2 Month Notice, which states an effective move-out date of June 30, 2017, indicating the following reason for seeking an end to this tenancy:

- *The landlord intends to convert the rental unit for use by a caretaker, manager or superintendent of the residential property.*

The landlord said that he is a property manager for the owners of this rental building, as well as 9 other buildings. He said that he manages 400 rental units. He claimed that he has been living in the same rental unit, which is a two-bedroom unit (1,200 square feet), for 18 years and the owners can rent it out for \$1,700.00 to \$1,800.00 per month, while a one-bedroom unit such as the tenant's would only rent for \$1,050.00. He stated that the tenant's rental unit is only 10 blocks away from his current residence and that it is the largest one-bedroom unit (900 square feet) of all the 400 units he manages. He explained that the tenant's unit is on the first floor of the building, which is easy access since there is no elevator in that building. He claimed that he has a lot of work and running around to do, so he cannot walk up and down stairs, so he needs to be on the first floor.

The tenant disputes the landlord's 2 Month Notice, stating that he did not issue it in good faith. She said that the landlord issued her a 2 Month Notice, dated February 7, 2017, for the same reason, and she received it on February 9, 2017. She provided a copy of the previous notice. The tenant filed an application to dispute it and both parties attended a hearing at the Residential Tenancy Branch ("RTB") on March 16, 2017, after

which a decision was made by a different Arbitrator on the same date. The file number for that hearing appears on the front page of this decision. The tenant provided a copy of that previous decision. At that hearing, as noted in the Arbitrator's decision at page 2, the landlord testified that he issued the notice in error, chose the wrong reason, accepted the tenant's submissions that he was not planning to convert the rental unit and that there were no permits for the building regarding re-zoning. The landlord did not dispute any of the above facts.

The tenant said that the landlord also tried to increase her rent three times in the last year. She said that other tenants in the same rental building are paying a higher rent than her because their units have been renovated; she said that two years ago, a neighbour told her that she was paying \$960.00 for rent, more than the tenant's newly increased rent which began this year in January 2017 at \$863.00. The tenant's rent was initially \$775.00 in February 2008 when her tenancy started, as per her original written tenancy agreement.

The tenant claimed that she has had problems with the landlord regarding her cats in the rental unit, that her boyfriend had a recent altercation with the landlord, and the landlord wants to do renovations and charge additional rent for her unit. She provided photographs of the other buildings managed by the landlord, showing vacancy signs for one bedroom units with the landlord's contact number, stating that other vacant units can be used by the landlord, rather than her unit. She also maintained that there is another vacancy in her own building because someone died. The landlord maintained that while there may be other vacancies, the owners chose the tenant's rental unit for him to occupy and it was the largest one with easy access.

Analysis

Subsection 49(6)(e) of the *Act* sets out that a landlord may end a tenancy in respect of a rental unit if the landlord intends, in good faith, to convert the rental unit for use by a caretaker/manager of the residential property.

According to subsection 49(8) of the *Act*, a tenant may dispute a 2 Month Notice by making an application for dispute resolution within fifteen days after the date the tenant received the notice. The tenant received the 2 Month Notice on April 27, 2017, and filed her application to dispute it on May 10, 2017. The tenant's application is within the 15 day time limit under the *Act*. Therefore, the onus shifts to the landlord to justify the basis of the 2 Month Notice.

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

A claim of good faith requires honesty of intention with no ulterior motive...

...

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.

I find that the landlord had a number of ulterior motives for issuing the 2 Month Notice and it was not issued in good faith.

First, the landlord issued another 2 Month Notice to the tenant in February 2017 for the same reason. At that hearing in March 2017, he claimed that he applied for the wrong reason. He accepted the tenant's submissions that he was not planning to convert the rental unit. When I questioned the landlord as to how he applied for the wrong reason in March 2017 and somehow it was the right reason one month later in April 2017, the landlord had no explanation.

Second, the landlord increased the tenant's rent in January 2016. He attempted another rent increase again the same year in November 2016 but the tenant disputed it and the landlord withdrew the increase. The landlord increased the rent again in January 2017, after waiting the full year when the tenant told him that he had to wait.

Third, the tenant identified another vacant unit in her building, as well as vacancies in other buildings that the landlord manages. She provided photographs with vacancy signs for one-bedroom apartments showing the landlord's number to call in order to inquire. The landlord claimed that he was doing what he was told to do by the owners

and they had selected the tenant's rental unit because it was the biggest one-bedroom unit. He did not identify why he needed the "biggest" one-bedroom unit for himself, as opposed to any other one-bedroom units on the first floor or otherwise. Presumably, bigger one-bedroom units can rent for higher amounts than smaller one-bedroom units, which references the landlord's argument of renting his own bigger two-bedroom unit for a higher price.

Fourth, the landlord did not provide any written evidence for this hearing. He claimed that he was not aware that he could submit evidence prior to the hearing because he never had to deal with this type of issue before. He said that he manages 10 buildings and 400 rental units and that he has attended "hundreds" of RTB hearings in the past and he has submitted evidence for other hearings. The landlord also attended a recent RTB hearing for the same reason with this tenant in March 2017. I do not accept the landlord's explanation that he did not know that he could submit evidence for this hearing; it was clearly stated on his notice of hearing sheet that he acknowledged receiving from the tenant.

Fifth, the landlord did not submit any permits or written evidence indicating that he intended to convert the unit. He did not provide any testimony indicating how he would convert the unit. He said that the landlord owners wanted him to move after 18 years of living in the same unit, yet they did not testify at this hearing. He did not provide documentary evidence to show that the tenant's rental unit is the biggest one bedroom unit of the 400 others that he manages; this was the reason he said that he had to use the unit, due to the size and the fact that it was on the first floor. The landlord has been living on the third floor of another building for 18 years without any issues, yet now he claims that he requires a unit on the first floor because he is unable to walk up and down the stairs and the other building has an elevator. The landlord identified no physical disability issues which require him to use an elevator. He does not carry heavy items to and from his unit, as admitted in his testimony; he said that he is busy and has to go up and down to different units to manage the property.

Sixth, the tenant identified recent disputes with the landlord, including an altercation between her boyfriend and the landlord which involved a parking issue. The tenant also claimed that because of her early tenancy, she was "grandfathered" into being allowed to keep pets, which other tenants are not allowed to do, and have free parking and storage, for which other tenants pay extra.

Based on a balance of probabilities and for the reasons outlined above, I find that the landlord has not met his burden of proof to show that he intends to convert the rental unit for use by a caretaker, manager or superintendent of the residential property. Accordingly, I allow the tenant's application to cancel the landlord's 2 Month Notice. The 2 Month Notice, dated April 24, 2017, is cancelled and of no force or effect. The landlord is not entitled to an order of possession for the landlord's use of property. This tenancy continues until it is ended in accordance with the *Act*.

As the tenant was successful in her application, I find that she is entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

The tenant's application to cancel the landlord's 2 Month Notice is allowed. The landlord's 2 Month Notice, dated April 24, 2017, is cancelled and of no force or effect. The landlord is not entitled to an order of possession for the landlord's use of property. This tenancy continues until it is ended in accordance with the *Act*.

I order the tenant to deduct \$100.00 from a future rent payment at the rental unit, in full satisfaction of the monetary award for the filing fee.

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: July 04, 2017

Residential Tenancy Branch