



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COLDWELL BANKER PRESTIGE REALTY
and [tenant name suppressed to protect privacy]

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 May 28, 2017 ("2 Month Notice"), pursuant to section 49; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord's agent ("landlord") and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that he had authority to speak on behalf of the landlord company named in this application and on behalf of the landlord owner of the rental unit, as an agent at this hearing. This hearing lasted approximately 49 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 landlord confirmed that no written evidence was provided by the landlord for this hearing.

The tenant confirmed receipt of the landlord's 2 Month Notice on May 29, 2017, which the landlord said was served to the tenant on May 28, 2017, by way of posting to her rental unit door. 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 May 29, 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 this 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 tenancy began on December 1, 2013. Monthly rent in the current amount of \$1,687.50 is payable on the first day of each month. A security deposit of \$800.00 and a pet damage deposit of \$500.00 were paid by the tenant and the landlord continues to retain both deposits. The tenant continues to reside in the rental unit. A written tenancy agreement was signed by both parties but a copy was not provided for this hearing.

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

The landlord's 2 Month Notice, which states an effective move-out date of July 31, 2017, indicates the following reason for seeking an end to this tenancy:

- *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 landlord stated that the owner's son intends to occupy the rental unit after the tenant vacates. He said that the owner's son wants his own place to live for independence, the landlord's place is too small to accommodate him, and he wants to be closer to work.

The tenant disputes the landlord's 2 Month Notice, stating that the landlord did not issue it in good faith. She said that the landlord issued the same notice for the same reason as a previous 2 Month Notice, where the parties attended for a "previous hearing" at the Residential Tenancy Branch ("RTB") on March 23, 2016, and a different Arbitrator

issued a decision on the same date to cancel the notice. The tenant provided a copy of this decision. The file number for that previous hearing appears on the front page of this decision. The tenant said that the landlord made the same arguments at the previous hearing.

The tenant stated that she investigated after the previous hearing and went to the owner's son's work and found out that he had been working there from before the last hearing, despite his claims that he had just got a new job and wanted to move closer to it. She claimed that the owner's son provided a letter from his employer at the previous hearing one month after the previous notice was issued, claiming he had just got a new job. She maintained that she has also visited the owner's boyfriend's house and the owner's son's house that are next door to each other on the same large piece of land. She said that she recorded the owner and her boyfriend using endearments with each other to prove that they were in a relationship but she did not submit this evidence for the hearing. The landlord confirmed that it was the correct address that the tenant visited but it was not the owner's boyfriend's house, but her friend's house. The landlord said that he did not know the address of the owner's son's place. The tenant said that both houses are huge, have more than enough room for the owner and her son to live separately and are closer to the owner's son's work than the tenant's rental unit. She also explained that both parties have had two other previous RTB hearings in August and November 2015 at the RTB over repair issues with the stove and oven and I was one of the Arbitrators who issued a decision in August 2015. The file numbers for both hearings appear on the front page of this decision.

Analysis

Subsection 49(3) of the Act states 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.

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 May 29, 2017, and filed her application to dispute it on June 9, 2017. Therefore, 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 ulterior motives for issuing the 2 Month Notice and it was not issued in good faith.

Firstly, the landlord argued the same reasons as in the previous March 2016 RTB hearing. No new circumstances were revealed by the landlord. The previous 2 Month Notice was cancelled by the Arbitrator at the previous hearing.

Second, I accept the tenant's testimony that she attended at the owner's son's work and at his home after the March 2016 RTB hearing, and that he has his own place to live and his current residence is closer to his work. I reject the landlord's evidence that the owner's son has nowhere to live because he cannot live with the owner; the landlord did not even know the owner's son's current address when I asked him during the hearing.

Based on a balance of probabilities and for the reasons outlined above, I find that the landlord has not met the burden of proof to show that the owner's son intends to occupy the rental unit in good faith.

Accordingly, I allow the tenant's application to cancel the landlord's 2 Month Notice. The 2 Month Notice, dated May 28, 2017, is cancelled and of no force or effect. The landlord is not entitled to an order of possession for landlord's use of property. This tenancy continues until it is ended in accordance with the Act.

As the tenant was successful in this 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 May 28, 2017 is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

I order the tenant to deduct \$100.00 from her future rent payable to the landlord for this tenancy and rental unit, in full satisfaction of the monetary award issued 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: August 15, 2017

Residential Tenancy Branch