



Dispute Resolution Services

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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 of the *Act*;
- an Order directing the landlord to comply with the *Act* pursuant to section 62;
- a return of the filing fee pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The parties agreed that the landlord's 2 Month Notice was served on the tenant on or around May 13, 2017. The parties agreed that on or about May 18, 2017 the tenant served the tenant's Notice of Dispute Resolution to the landlord by way of Canada Post Registered Mail. I find that the landlord was duly served with the tenant's application and evidentiary package in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Does the tenant have grounds to cancel a 2 Month Notice to End Tenancy? If not, should the landlord be issued an Order of Possession?

Is the tenant entitled to a return of the filing fee?

Should the landlord be directed to comply with the *Act*?

Background and Evidence

Testimony was provided at the hearing by both parties that this tenancy began on August 11, 2016. Rent was \$600.00 per month; however, following the decision of an arbitrator with the *Residential Tenancy Branch* on June 8, 2017 rent was reduced to \$550.00 per month. A security deposit of \$300.00 continues to be held by the landlord.

The tenant sought cancelation of the landlord's 2 Month Notice to End Tenancy on the grounds that it was issued in bad faith. The tenant argued that there had recently been continuous attempts to remove him from the rental suite through a combination of a denial of services and by way of a hand-written Notice to End Tenancy. The tenant explained that he and the landlord had enjoyed a good relationship; however, things had recently soured when he successfully took the landlord to arbitration following the unannounced removal of cable, internet and laundry.

Shortly following the June 8, 2017 decision of an arbitrator who lowered the tenant's rent from \$600.00 per month to \$550.00 per month, the tenant received the landlord's 2 Month Notice to End Tenancy. In addition to his above described issues with the landlord, the tenant questioned the landlord's good faith in the issuance of the 2 Month Notice based on the fact that the home is currently for sale, and because a hand written notice to end tenancy was served on the tenant following the removal of services. As part of his evidentiary package, the tenant provided detailed written submissions highlighting his fractured relationship with the landlord. Included in these submissions was evidence of an illegal rental increase which the tenant had challenged.

The landlord denied that her actions were carried out in bad faith. She stated that her daughter had recently broken up with her boyfriend and now required the use of the rental suite. She said that her daughter moved back to the house, "2 or 3 months ago," and they are currently sharing a bedroom. She said this arrangement does not work for either herself or her daughter. The landlord explained that it was her understanding that the tenancy between herself and the tenant was to be a short term/temporary arrangement; however, no fixed-term tenancy was entered into by the parties.

Analysis

If the good faith intent of the landlord is called into question, the burden of proof is placed on the landlord to establish why they truly intend to do what they said on the Notice to

End Tenancy. In this case the landlord must show that a close family member intends to occupy the rental unit.

The tenant disputed the intention of the landlord and said that the landlord issued the 2 Month Notice following the ruling of an Arbitrator with the *Residential Tenancy Branch* whereby his rent was reduced by \$50.00 per month.

Residential Tenancy Branch Policy Guideline number 2 notes that 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 Guideline reads in part as follows:

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.

The tenant has disputed the good faith intention of the landlord which I find has some basis. From the evidence before me, I find that there is sufficient confusion to leave me in doubt about the true intent of the landlord's intentions. Specifically, the tenant cited: a denial of numerous services from his tenancy; an improperly formatted "30 Day Eviction Notice;" an improperly issued rental increase; and the current 2 Month Notice which the landlord served to the tenant after the decision of an Arbitrator with the *Residential Tenancy Branch* lowering the tenant's rent.

While the landlord has provided an explanation for the 2 Month Notice issued on May 13, 2017, I find the explanation to be somewhat unconvincing when compared to the evidence presented at the hearing by the tenant. The landlord failed to provide any evidence from her daughter showing that the suite was required for her occupation, her

daughter did not appear at the hearing as a witness, and the landlord provided insufficient details concerning the date that her daughter returned home.

As the tenant was successful in his application he may recover the \$100.00 filing fee.

Conclusion

The tenant's application to cancel the 2 Month Notice is allowed. The 2 Month Notice is of no continuing force or effect. This tenancy will continue until it is ended according to the *Act*.

The tenant's application was successful, so the tenant is entitled to recovery of the \$100.00 filing fee for the cost of this application. As this tenancy is continuing, I allow the tenant to recover his \$100.00 filing fee by reducing a future rent payment by that amount on one occasion.

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 22, 2017

Residential Tenancy Branch