



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 June 21, 2017 ("2 Month Notice"), pursuant to section 49; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord and his two agents (wife and daughter) and the tenant and his two agents (wife and daughter) attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Both the landlord and tenant confirmed that their wives and daughters had authority to speak on their behalf as agents at this hearing. The landlord and his wife stated that the landlord had trouble with the English language and he wanted his daughter to speak on his behalf because she knew English well and he did not arrange for an English language translator to assist him at this hearing. This hearing lasted approximately 70 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 and the tenant confirmed receipt of the landlord's written evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application and the tenant was duly served with the landlord's written evidence package. Neither party had any objection to me considering the other party's written evidence at the hearing or in my decision, as both parties reviewed the other party's written evidence prior to the hearing.

The tenant confirmed personal receipt of the landlord's 2 Month Notice on June 25, 2017, which the landlord said was served to the tenant on the same date. In accordance with section 88 of the *Act*, I find that the tenant was duly served with the landlord's 2 Month Notice on June 25, 2017.

Preliminary Issue – Inappropriate Behaviour by the Landlord and his Agents during the Hearing

Rule 6.10 of the Residential Tenancy Branch ("RTB") *Rules of Procedure* states the following:

6.10 Interruptions and inappropriate behaviour at the dispute resolution hearing

Disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator's direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.

This hearing began at 11:00 a.m. and ended at 12:10 p.m. Throughout the hearing, the landlord and his wife yelled at me and whispered answers to their daughter when she did not know the answers to my questions. The landlord, his wife and daughter continuously interrupted each other and myself and became upset by my questions, often arguing and debating issues rather than answering my questions. I repeatedly warned the landlord and his agents to stop this behaviour but they continued.

The landlord then became upset, stating that I was talking too quickly and that he wanted me to talk slowly so that his daughter could translate for him. I notified the landlord that he and his wife asked for their daughter to speak on the landlord's behalf at the outset of the hearing because he had difficulty with English and he did not bring a translator to the conference. He then claimed that he wanted to hire a lawyer and bring one to the hearing. I notified him that he could have brought a lawyer to the hearing, as this information was contained on the notice of hearing and the "Landlord and Tenant Fact Sheet" that was given to him with the tenant's application. I further informed him that the tenant filed her application on July 5, 2017, which he received shortly thereafter, so he had more than two months to arrange for a lawyer and a translator to attend the hearing on September 13, 2017. The landlord then became upset by my answers so he asked for my name again, which I provided to him three times during the hearing along with the spelling of my last name.

I note that approximately 55 minutes of the 70-minute hearing was spent listening to the landlord and his agents providing submissions and arguing at the hearing.

I caution the landlord and his agents not to engage in the same rude, hostile, inappropriate and disruptive behaviour at any future hearings at the Residential Tenancy Branch, as this behaviour will not be tolerated and they may be excluded from future hearings. In that event, a decision will be made in the absence of the landlord.

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 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.

The tenant stated that he began his tenancy in the rental unit on July 1, 2007, with the former landlord. He said that the current landlord bought the property on November 1, 2010. The landlord claimed that both parties signed a new written tenancy agreement with a tenancy commencing on February 1, 2011 for a fixed term of one year after which it became a month-to-month tenancy. Both parties agreed that monthly rent in the current amount of \$2,747.00 is payable on the first day of each month. A security deposit of \$1,250.00 was paid by the tenant and the landlord continues to retain the deposit. The tenant continues to reside in the rental unit.

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 August 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 his daughter intends to occupy the rental unit after the tenant vacates. His daughter, who testified at this hearing, confirmed that she wants her own place to live for privacy and independence and she wants to live away from her parents, where she is currently residing. When I asked the landlord's daughter about how many bedrooms and bathrooms the rental unit has, she said she did not know and she had not been there since 2011, when her parents purchased the house. The landlord and his wife could be heard whispering the answers to their daughter, who then claimed that the house had two levels of approximately 1,000 square feet each, with three bedrooms and one bathroom on each level. The tenant disputed this, indicating that there are three bedrooms and two bathrooms on the upper level which is 1,398 square feet and three bedrooms and one bathroom on the lower level which is 1,110 square feet.

When I asked what level she was intending to occupy in the rental unit, the landlord's daughter claimed that she wanted to live on the upper level, where the tenants are currently residing. When I asked why she could not live on the lower level, she said that it was being occupied by other tenants and it did not have a separate entrance or door separating the levels. The landlord's wife then commented that the tenant was subletting the lower level to other tenants and that he should know to serve them with a 2 Month Notice to end their tenancy. The tenant confirmed that he was subletting the property to four tenants downstairs.

The landlord's wife later stated that her daughter wanted to occupy the entire house, not just the upper level. When I asked the landlord's daughter why she required six bedrooms and three bathrooms just for herself, she stated that she wanted to have a family of her own one day. The landlord's wife claimed that her daughter plans to be with her boyfriend, have kids, hire people to take care of the kids and have her in-laws move in with them as well. When I asked the landlord's daughter about this, she initially stated that her boyfriend would not be living with her and he had his own place. She then stated that she does not know whether she will marry her boyfriend as there are no current plans to do so, she does not know when she will have kids but hopes to in the next two years, and that her boyfriend has his own place and he cannot give notice to move yet because he may be homeless if she is unable to move into the rental unit.

The landlord's wife claimed that she has fights with her daughter so she wants her to move out. She later claimed that she wants to sell their current residence and move into the rental unit eventually to live with her daughter. The landlord's daughter stated that her current residence is approximately 45 minutes from her workplace, and that the rental unit is farther from her work at about 1 hour away. She said that where she lives with her parents is a two-level house that has three bedrooms and two bathrooms on the upper level and three bedrooms and one bathroom on the lower level. She said that she has her own room on the upper level but has to share both bathrooms with her parents on the upper floor. She said that there are tenants living on the lower level and she does not want to live there on her own because there is no separate entrance or door separating the two levels so she does not have privacy.

The landlord's wife claimed that she served two 10 Day Notices to End Tenancy for Unpaid Rent or Utilities ("10 Day Notices") in 2016 to the tenant for failure to pay the rent on time. She said that the tenant paid within the 5 days allowed each time, so the notices were cancelled. The tenant denied receiving such notices, stating that he paid the landlord by way of 6 or 12 post-dated cheques, so his rent was always on time.

The tenant testified that the landlord issued the 2 Month Notice in order to increase the monthly rent. He stated that he believes the landlord's daughter will not move in but the rental unit will be re-rented to new tenants for a higher amount. The landlord's wife said that she was aware that the tenant was paying \$2,000.00 per month for rent with the former landlord and both parties agreed that the tenant would pay the landlord \$2,500.00 per month for rent in 2011 when the new tenancy began. The tenant said that he had a fight with the landlord and reluctantly agreed to pay \$500.00 extra per month because the landlord said that the place was worth \$4,000.00 and wanted more money. The landlord denied this allegation.

The landlord's wife agreed that she served notices of rent increase to the tenant three times during this tenancy to increase the rent from \$2,500.00 to its current amount of \$2,747.00. The landlord's wife claimed that every time a notice of rent increase was served to the tenant, they asked for repairs to be done in the rental unit, which cost more than the amount of the higher rent. She said that the tenant was always causing "trouble" by asking for repairs right after being issued notices of rent increase.

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 June 25, 2017, and filed his application to dispute it on July 5, 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.

First, the landlord, by his own admission, issued two previous 10 Day Notices to the tenant for unpaid rent. Issuing other notices to end tenancy can call into question the good faith intent of the landlord.

Second, the landlord received a \$747.00 increase in rent from the \$2,000.00 amount that the tenant was paying to the former landlord. The tenant claimed that he reluctantly agreed to pay \$500.00 more at the outset of the tenancy, and this amount is well above the *Residential Tenancy Regulation* amount of 2.3% for 2011. Three other notices were given to increase the rent by an additional \$247.00 throughout the tenancy. The landlord's wife commented during the hearing that the tenant's rent amount does not cover the mortgage or property taxes for the rental unit. Her comments that the tenant causes "trouble" by asking for repairs after each rent increase, which are required to be done by landlords throughout a tenancy, speaks to the tension between the parties during this tenancy.

Third, the landlord's wife and daughter frequently changed their evidence throughout the hearing. I did not find them to be credible witnesses. The landlord and his wife frequently whispered answers to their daughter during the hearing because she did not know the answers. The landlord's daughter did not know the amount of bedrooms or bathrooms in the house that she apparently intends to live in with her own family. She has not been there since 2011. Her testimony that she intends to live in a six-bedroom, three-bathroom house by herself is not believable. Her boyfriend has no intention to move in with her at this time since he has his own place, as per her own testimony. She has no current plans to marry her boyfriend or move her in-laws into the home at this time. She does not have any children and does not plan to have any for at least two years, so she does not require extra space in the home for children or caregivers for children at this time. The rental unit is further away from her work than her current residence. Her evidence that she wants privacy from her parents is negated by her mother's testimony that she plans to sell their current residence and move in with their daughter.

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 his daughter 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 landlord's 2 Month Notice, dated June 21, 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 he 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 June 21, 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 his 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: September 15, 2017

Residential Tenancy Branch