



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, DRI, O, 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 (the 2 Month Notice) pursuant to section 49;
- a determination regarding their dispute of an additional rent increase by the landlord pursuant to section 43;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony that the tenant served the landlord with the notice of hearing package via Canada Post Registered Mail and in person and the submitted documentary evidence in person on October 29, 2017. Both parties confirmed that the landlord served the 2 pages (booking confirmation) to the tenant in person on October 26, 2017. The tenant confirmed service. No other service issues were raised. I accept the evidence of both parties and find that both parties have been sufficiently served as per section 90 of the Act.

It was clarified with both parties that the tenant's request to dispute an additional rent increase was pre-mature as no notice of rent increase was served by the landlord to the tenant. Both parties confirmed that the landlord had started discussions with the tenant regarding a rent increase. As such, this portion of the tenant's application was dismissed.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 2 Month Notice?

Is the tenant entitled to recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Neither party provided any details of the tenancy.

Both parties confirmed that the landlord served the tenant with a 2 Month Notice to End Tenancy issued for Landlord's Use (the 2 Month Notice) dated July 27, 2017 by posting it to the rental unit door on July 27, 2017. The 2 Month Notice sets out an effective end of tenancy date of September 30, 2017 and provides one reason selected as:

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 tenant argues that the 2 Month Notice was given only after the tenant had refused to pay a \$180.00 rent increase requested by the landlord.

The landlord in response provided affirmed testimony that the reason the 2 Month Notice was given was for the landlord's father-in-law to live in. The landlord's father-in-law is coming from India to reside at the property. The landlord disputes the tenant's claim and stated that no notice of rent increase was given to the tenant, but that only discussions were held. The landlord claimed that it was by coincidence that these two incidents had occurred at the same time. The landlord relied solely upon a copy of the booking confirmation information for an airline ticket from India to Vancouver for his father-in-law.

Analysis

Subsection 49(4) of the Act sets out that a landlord may end a tenancy in respect of a rental unit where a close family member of the landlord intends in good faith to occupy the rental unit.

Where a tenant applies to dispute a 2 Month Notice, the onus is on the landlord to prove, on a balance of probabilities, the reasons on which the 2 Month Notice is based.

Further 2 Month Notices have a good faith requirement. *Residential Tenancy Policy Guideline* "2. Good Faith Requirement when Ending a Tenancy" helps explain this "good faith" requirement:

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...

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 provided undisputed affirmed testimony that he was served the 2 Month Notice following an attempt by the landlord to verbally negotiate a higher rent which was refused. The landlord failed to provide sufficient evidence that he was in good faith occupying the rental premises with his father-in-law and relies solely on a copy of a booking confirmation of an air ticket for his father-in-law to travel from india to vancouver. I find on a balance of probabilities that the landlord did not meet his onus of proof. As such, the tenant's application to cancel the 2 Month Notice dated July 27, 2017 is granted. The tenancy shall continue.

As the tenant has been successful, he is entitled to recovery of the \$100.00 filing fee. I authorize the tenant to withhold one-time \$100.00 from the next month(s) rent upon receipt of this decision to recover the filing fee.

Conclusion

The tenant's application is granted. The 2 Month Notice is cancelled. The tenancy shall continue.

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: November 03, 2017

Residential Tenancy Branch