



Dispute Resolution Services

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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* (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; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord confirmed receipt of the tenant's application for dispute resolution ('application'). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenant's application. As both parties confirmed receipt of each other's evidentiary materials, I find that these documents were duly served in accordance with section 88 of the *Act*.

As the tenant confirmed receipt of the 2 Month Notice on August 28, 2017, I find that this document was duly served to the tenant in accordance with section 88 of the *Act*.

Issues to be Decided

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

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

Both parties agreed that there is no written tenancy agreement, but that this month-to-month tenancy began in April 2015, with the current landlord taking over this tenancy in March 2016 after he purchased the home. Rent is currently set at \$320.12 per month, which allows the tenant to occupy one of the seven rented rooms on the main and upper floor of the house, plus access to a shared kitchen and bathroom with other tenants. The landlord holds a security deposit of \$150.00, and the tenant continues to reside in the rental unit.

The landlord issued the 2 Month Notice, with an effective move-out date of October 31, 2017 for the following reason:

- The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse.

The landlord provided the following background for why they had decided to issue the 2 Month Notice. They testified that the 2 Month Notice was issued as the landlord's parents wanted to occupy the house.

The landlord's parents currently reside with the landlord in his home, but required more space. The landlord testified that 5 of the 7 tenants have already moved out, with the applicant being the remaining tenant after the other tenant moves out on November 30, 2017.

The tenant testified that he did not believe that the landlord served this 2 Month Notice in good faith, and believes that they simply wanted to evict him in order to increase the rent. The tenant testified that the landlord had already imposed the maximum allowable rent increases in accordance with the *Act*. He testified that this is the third notice to end tenancy issued to him by the landlord. The tenant testified that he was previously issued a 10 Day Notice for Unpaid Rent, and a 1 Month Notice to End Tenancy for Cause, both which were dismissed by an Arbitrator. The 10 Day Notice was cancelled after the hearing on June 9, 2016, and the 1 Month Notice was cancelled after a hearing on June 13, 2017. The tenant testified that the landlord has a history of harassment towards him in an attempt to persuade him to move out. The tenant testified that the 10 Day Notice was dismissed as the landlord would attempt to serve him when he was away, missing the deadline to dispute the notices to end tenancy.

The landlord disputed the tenant's testimony stating that his parents simply wanted to occupy the home.

Analysis

Subsection 49(3) of the *Act* sets out 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. The landlord states that his parents intended to occupy the suite as soon as possible.

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

"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."

Although the landlord stated that he had issued the 2 Month Notice in order for his parents to move into the suite, I find that the tenant had raised doubt as to the true intent of the landlord in issuing this notice. He gave undisputed sworn testimony that this was the third Notice to End Tenancy issued to him, and the tenancy was to continue after the first two occasions. The tenant testified that the landlord issued him the 2 Month Notice two months after being unsuccessful in ending the tenancy on the grounds of a 10 Day Notice and a 1 Month Notice. As the tenant raised doubt as to the landlord's true intentions, the burden shifts to the landlord to establish that they do not have any other purpose to ending this tenancy.

Although the landlord indicated that his parents wished to move into the rental home, the landlord did not establish that he did not have any other purpose in ending this tenancy. I find that the fact that the landlord was unsuccessful in ending the tenancy two months prior to issuing the 2 Month Notice raises doubt as to the landlord's true intentions.

I find that the landlord has not met their burden of proof to show that they issued the 2 Month Notice in good faith. I find that the testimony and evidence during the hearing raised questions about the landlord's good faith. In coming to this determination, I find that the landlord had issued several notices to end tenancy, with the first two being dismissed by an Arbitrator, and the third being issued shortly thereafter.

As the good faith intention of the landlord was called into question, Residential Tenancy Policy Guideline 2 clearly states that "the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy". I find that the landlord provided little detail as to why his parents wished to occupy the entire home other than the fact that they required more room.

I find that the landlord has not met their burden of proof to show that they do not have any other purpose in ending this tenancy. Based on a balance of probabilities and for the reasons outlined above, I find that the landlord has not met their onus of proof to show that the landlord, in good faith, requires the tenant to vacate this specific rental unit in order for his parents to move in.

Accordingly, I allow the tenant's application to cancel the 2 Month Notice. The landlord's 2 Month Notice, dated August 27, 2017, is hereby cancelled and of no force and effect. This tenancy continues until it is ended in accordance with the *Act*.

I find that the tenant is entitled to recovery of the filing fee.

Conclusion

The tenant's application to cancel the landlord's 2 Month Notice is allowed. The landlord's 2 Month Notice, dated August 27, 2017, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

I allow the tenant to implement a monetary award of \$100.00 for recovery of the filing fee, by reducing a future monthly rent payment by that amount. In the event that this is not a feasible way to implement this award, the tenant is provided with a Monetary Order in the amount of \$100.00, and the landlord must be served with **this Order** as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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 21, 2017

Residential Tenancy Branch