



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNL, FF, O

### Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* ("the Act") for:

- cancellation of the landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the Two Month Notice) pursuant to section 49; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord and the tenants 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. Tenant V.K. (the tenant) stated that they would be the primary speaker for the tenants.

While I have turned my mind to all the documentary evidence, including the testimony of both parties, not all details of the respective submissions and/or arguments are reproduced here.

The tenant testified that they served the landlord with the Tenant's Application for Dispute Resolution (Application) and an evidentiary package by way of registered mail on September 21, 2017. The landlord confirmed that they received the Application and evidentiary package. In accordance with sections 88 and 89 of the Act, I find the landlord was duly served with the Application and evidentiary package.

The tenant testified that they served the landlord with additional evidentiary by way of registered mail on November 09, 2017. The landlord confirmed that they received the tenants' evidence. In accordance with section 88 of the Act, I find the landlord was duly served with the tenants' additional evidence.

The landlord admitted that he did not serve any evidence to the tenants.

Rule 3.15 of the Residential Tenancy Branch Rules of Procedure states that documentary evidence that is intended to be relied on at the hearing by the respondent must be received by the applicant not less than 7 days before the hearing. I find that the landlord did not serve the tenants with their evidence and that the tenants may be prejudiced by this as they did not have a chance to respond to the landlord's evidence. For this reason the landlord's evidence is not accepted for consideration.

The tenant testified that they received the Two Month Notice, which was served to them in person on September 12, 2017. In accordance with section 88 of the *Act*, I find the tenants were duly served with the Two Month Notice on September 12, 2017.

#### Issue(s) to be Decided

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

Are the tenants entitled to recover the filing fee for this application from the landlord?

#### Background and Evidence

A copy of the tenancy agreement was entered into evidence showing that this tenancy commenced on October 01, 2016, with a monthly rent of \$1,800.00, due on the first day of each month. The landlord testified that they currently retain a security deposit in the amount of \$900.00.

The tenants submitted a copy of the landlord's September 12, 2017, Two Month Notice into evidence. In the Two Month Notice, requiring the tenant to end this tenancy by November 12, 2017, the landlord cited the following reason:

*The landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant*

The tenants also entered into written evidence:

- A copy of a written statement from the tenants describing events that led up to the issuance of the Two Month Notice. The written statement indicates that the landlord asked to use the garage to store items on September 11, 2017, the tenants refused and the landlord issued the Two Month Notice the following day;

- Copies of text message exchanges with an agent of the landlord concerning the landlord's requested use of half of the garage for September 20, 2017, and discussion of a rent reduction for the tenants which was refused by the agent; and
- A copy of a bank statement showing six fees for stop payments on cheques;

The tenant testified that on September 08, 2017, the landlord asked the tenants to extend their tenancy and a six month tenancy agreement was signed, with the tenants giving the landlord six postdated cheques for future rent payments. The tenant stated that the landlord has refused the tenants' request to be given a copy of the six month tenancy agreement that they signed. The tenant stated that the landlord lost the cheques and came to the rental unit for another cheque for October 2017 rent and became aggressive when the tenants questioned him about the previous cheques that were given to him. The tenant submitted that they had to put stop payments on the six postdated cheques that they gave to the landlord.

The tenant submitted that the landlord asked to store kitchen cabinets in the garage that he intends to install in the rental unit. The tenant stated that when the tenants and the landlord could not come to an agreement the landlord issued the Two Month Notice. The tenant maintains that the landlord has no plans to move into the rental unit right now as he had just signed a six month tenancy agreement with the tenants. The tenant stated that they have checked with the municipality and there are no permits issued for the rental unit.

The landlord testified that they have sold their house and had to be out of it by November 15, 2017. The landlord further testified that he is currently staying in a room at his parents' house which is not big enough for him and his family. The landlord stated that the tenants said no to the landlord for the use of the storage area and had told the landlord previously that they did not want to stay at the rental unit any longer. The landlord denied that he signed a six month lease with the tenants and denied that he accepted six postdated cheques from the tenants.

### Analysis

Section 49 of the *Act* allows a landlord to end a tenancy if the landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant.

Section 49 of the *Act* provides that upon receipt of a Notice to End Tenancy for Landlord's Use of Property the tenant may, within 15 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove the Two Month Notice was issued to the tenant in good faith and truly intends on doing what they said they would do on the Two Month Notice. As the tenant disputed this notice on September 19, 2017, and since I have found that the Two Month Notice was served to the tenant on September 12, 2017, I find the tenant has applied to dispute the Two Month Notice within the time frame provided by section 49 of the *Act*.

Residential Tenancy Policy Guideline #2 defines "good faith" as 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. The Guideline goes on to say that 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 the question as to whether the landlord had a dishonest purpose is raised.

When the good faith intent of the landlord is called into question, the burden rests with the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The Guideline requires the landlord to establish that they do not have another purpose that negates the honesty of intent or demonstrates they do not have an ulterior motive for ending the tenancy.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In the case before me, I find the landlord has failed to provide any evidence to corroborate their submissions that they have all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant.

I find that, based on a balance of probabilities and the evidence provided by the tenants, I prefer the tenants' testimony that they signed an extension to their tenancy agreement. I accept the tenants' evidence of six postdated cheques which needed to have stop payments issued on them. I accept the tenants' written evidence and affirmed testimony that, upon being unable to come to an agreement with the tenants regarding the use of storage space, the landlord issued the Two Month Notice.

I find the landlord has failed to prove that Two Month Notice was issued in good faith. I further find that the landlord had an ulterior motive to end the tenancy due to not being able to use the storage area.

For the above reason the Two Month Notice is set aside and this tenancy will continue until ended in accordance with the *Act*.

As the tenants have been successful in this application, I allow them to recover their filing fee from the landlord.

#### Conclusion

The tenants are successful in their Application.

The landlord's Two Month Notice issued on September 12, 2017, is set aside and this tenancy will continue until it is ended in accordance with the *Act*.

Pursuant to section 72 of the *Act*, I order that the tenant may reduce the amount of rent paid to the landlord from a future rent payment on one occasion, in the amount of \$100.00, to recover the filing fee for this application.

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: December 01, 2017

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Residential Tenancy Branch