



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNQ, OLC, FFT

### 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 for Tenant no longer Qualifies for Subsidized Housing pursuant to section 49.1;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; 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 F.A. (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 Application and an evidentiary package by way of registered mail on or about November 19, 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 an additional evidentiary package by personally handing it to the landlord on January 30, 2018. The landlord confirmed that they received the tenants' evidence but testified that he did not have a chance to review it.

Rule 3.14 of the Residential Tenancy Branch Rules of Procedure states that documentary evidence that is intended to be relied on at the hearing must be received by the respondent not less than 14 days before the hearing. I find that the tenants did not serve the landlord with their evidence in accordance with the Rules of Procedure and that the landlord may be prejudiced by this as they did not have a chance to respond to the tenants' evidence. For this reason I will not consider the tenants' second evidentiary package.

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

At the outset of the hearing it was established that the tenants selected the wrong option when applying to dispute the notice to end tenancy. The tenants requested to amend their Application for Dispute Resolution (the Application) to dispute a Two Month Notice for Landlord's Use of Property (the Two Month Notice) pursuant to section 49 of the *Act*. As the landlord served the Two Month Notice to the tenants I find that he will not be prejudiced by this amendment and I will allow it. In accordance with section 64 (3) (c), of the *Act*, I amend the Application to dispute the Two Month Notice.

The tenant testified that they received the Two Month Notice, which was personally served to them on October 28, 2017. In accordance with section 88 of the *Act*, I find the tenants were duly served with the Two Month Notice.

The first page of the Two Month Notice was not provided at the time of the hearing. I instructed the tenants to provide the first page of Two Month Notice to the Residential Tenancy Branch by the end of the next business day after the date of the hearing. As service of the Two Month Notice to the tenants is the reason that the tenants filed the Application for this hearing, I find that the landlord is not prejudiced in accepting the Two Month Notice as late evidence.

The tenant did submit a copy of the Two Month Notice by the deadline noted above. As such, I have considered this documentary evidence.

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 an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

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 but no commencement date of the tenancy was on the agreement. The tenant testified that they moved into the rental unit on February 01, 2012 and signed the tenancy agreement in August 2012. The tenancy agreement shows a monthly rent of \$1,000.00, due on the first day of each month with a security deposit in the amount of \$500.00.

The tenants submitted a signed copy of the landlord's October 28, 2017, Two Month Notice into evidence. In the Two Month Notice, requiring the tenant to end this tenancy by December 31, 2017, the landlord cited the following reason:

*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 tenants also entered into written evidence:

- a copy of a written statement from the tenants describing interactions with the landlord from July 21, 2017, to November 06, 2017; and
- copies of text messages exchanged between the tenants and the landlord in August 2017 and September 2017 where the landlord is asking the tenants to agree to a rent increase and if they do not agree then the landlord has another tenant that he would like to put in the rental unit;

The landlord testified that they recently purchased the rental unit in February of 2017 and that the rent the tenants are currently paying is below market value. The landlord submitted that he approached the tenants to increase the monthly rent and that the tenants did not agree to a rent increase other than the 4% rent increase allowed by the *Act* for 2018. The landlord stated that, upon the tenants refusing the proposed rent increase, he then decided that it would make more sense to have his son and daughter live in the rental unit due to the rental unit's proximity to the downtown area rather than continue to accept below market value rent from the tenants.

The tenant questioned why the landlord did not choose any of his other rental properties for the son and daughter to occupy and why the landlord did not issue the Two Month Notice earlier if he needed it for his children.

Tenant K.O. testified that they do not agree with the landlord's stated reason for issuing the Two Month Notice and believe it is only because the landlord wants increased rent for the rental unit. Tenant K.O. referred to a text submitted into evidence where the landlord asked the tenants whether they agreed to the rent increase and to let him know soon as possible as he had another prospective professional tenant that he did not want to miss out on.

The landlord stated that his other properties are not near the downtown area, other than one that is being rented at an acceptable monthly rent that the landlord does not want to lose. The landlord submitted that recent circumstances regarding the son and daughter's living situation, with the landlord having to drive them to the downtown area, became taxing on the landlord which led him to decide that it would make more sense for his children to live in the rental unit close to the downtown area where his son could walk to work.

### Analysis

Section 49 of the *Act* allows a landlord to end a tenancy if the landlord's children are going to occupy the rental unit.

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 November 09, 2017, and since I have found that the Two Month Notice was served to the tenants on October 28, 2017, I find the tenants have 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 his submission that his children are going to live in the rental unit

I find that, based on the affirmed testimony, a balance of probabilities and the evidence provided by the tenants, I accept the tenants' testimony that the landlord is seeking increased rent from the rental unit and that is the ulterior motive for issuing the Two Month Notice to the tenants. I find that the landlord admitted that the tenants are paying below market value rent and did not dispute the evidence provided from the tenants that he was trying to have the tenants agree to increased rent or have them move from the rental unit so that he could move another person into the unit for an increased amount of rent.

I find that the landlord was asking the tenants to pay increased rent and sign a new contract in late August 2017 and September 2017 or to move out and then proceeded to issue the Two Month Notice in October 2017 when not successful. Even if the landlord intends on moving his children into the rental unit, I find the landlord only decided to issue the Two Month Notice upon the tenants not agreeing to pay increased monthly rent which negates the honesty of the landlord's intent.

I find the landlord has failed to prove that Two Month Notice was issued in good faith and I find the landlord had an ulterior motive to end the tenancy due to the amount of rent being paid.

For the above reasons the Two Month Notice dated October 28, 2017, is set aside and this tenancy will continue until ended in accordance with the *Act*.

Section 62 (3) of the *Act* allows an arbitrator to make any order necessary to give effect to the rights, obligations and prohibitions under this *Act*, including an order that a landlord comply with this *Act*, the regulations or a tenancy agreement and an order that this *Act* applies.

I find that the tenants have provided evidence that the landlord has been contacting the tenants through text message repeatedly for them to accept a rent increase which is more than the allowable rent increase under the *Act*. I order the landlord to comply with the *Act* for any rent increase that he wants to give to the tenants and to respect the tenants' right to quiet enjoyment of their rental unit and the legally binding tenancy agreement that requires the tenants to pay a monthly rent of \$1,000.00 until increased 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 dated October 28, 2017, is cancelled and of no force or effect.

This tenancy will continue until it is ended in accordance with the *Act*.

I **order** the landlord to comply with the *Act* for any future rent increase or any other interactions with the tenants.

Pursuant to section 72 of the *Act*, I order that the tenants 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: February 01, 2018

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Residential Tenancy Branch