



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL; CNL, FF

Introduction

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

- an order of possession for landlord's use of property, pursuant to section 55.

This hearing also dealt with the tenant's cross-application pursuant to *Act* for:

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property, dated October 30, 2017 ("2 Month Notice"), pursuant to section 49;
- authorization to recover the filing fee for this application, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 68 minutes in order to allow both parties to fully present their submissions.

The hearing began at 9:30 a.m. with me and the landlord present. The tenant called in late at 9:47 a.m., indicating he had not been given a phone number to call in and then he was able to locate an email with a phone number after waiting on hold and attempting to reach an operator. I notified the tenant about what occurred in his absence before he called. I then continued the hearing with both parties and the hearing ended at approximately 10:38 a.m.

Both parties confirmed receipt of the other party's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with the other party's application.

The landlord testified that the tenant was served with the landlord's 2 Month Notice on October 30, 2017, in person and by way of posting to the rental unit door. The tenant

disputes the personal service, indicating he received the 2 Month Notice on November 2, 2017, by way of posting to his rental unit door. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlord's 2 Month Notice on November 2, 2017.

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 his 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 both parties' claims and my findings are set out below.

Both parties agreed to the following facts. This month-to-month tenancy began on October 1, 2012. Monthly rent in the current amount of \$1,000.00 is payable on the first day of each month. A security deposit of \$450.00 was paid by the tenant and the landlord continues to retain this deposit. No written tenancy agreement was signed by the parties. The tenant continues to reside in the rental unit. The rental unit is the lower level of a two-level house, where the landlord and her family occupy the upper floor.

The landlord seeks an order of possession based on the 2 Month Notice. The tenant seeks to cancel the landlord's 2 Month Notice and to recover the \$100.00 filing fee paid for his application.

A copy of the landlord's 2 Month Notice was provided for this hearing. It states an effective move-out date of January 1, 2018, indicating 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 testified that she requires the rental unit so that her 17-year-old daughter, who will be attending university in September 2018, can study, have her own independence and privacy. She maintained that she does not want to pay for her

daughter to live on the university campus when she owns the home and she can live there. She said that the three-bedroom and one-bathroom upper floor of the house is cramped now that her fiancé has moved in with all of his belongings after selling his own house. She explained that her daughter currently has her own bedroom, her son has another bedroom and the landlord and her fiancé share the third bedroom.

The landlord stated that her daughter will have more space in the two-bedroom, two-bathroom rental unit on the lower level that the tenant currently occupies and it will provide for more room for her fiancé's belongings to be stored. The landlord provided witness statements from herself, her daughter, her fiancé, her grandmother, and a friend, indicating her daughter's intention to move into the rental unit. None of these witnesses testified at this hearing.

The tenant disputes that the landlord issued the 2 Month Notice in good faith. He said that the landlord issued six previous notices to end tenancy including four 2 Month Notices and two 1 Month Notices to End Tenancy for Cause ("1 Month Notice"). He said that at all six previous Residential Tenancy Branch ("RTB") hearings, the landlord's notices were cancelled and her applications were dismissed. The landlord agreed with the above information. Neither party provided a copy of the previous decisions or file numbers.

The tenant said that the landlord was found to have bad faith at each hearing regarding the 2 Month Notices. He said that after the fifth hearing, the landlord paid him \$1,800.00 as compensation. The landlord claimed that she was told by the previous Arbitrators to obtain witness statements, which she provided for this hearing, and not to talk about any other issues because it would negate bad faith. The tenant claimed that the landlord said she was getting married in one of the 2 Month Notices. He stated that she had a medical condition for another notice.

The tenant claimed that the landlord has accused him of being a drug user, which the landlord denied. The landlord said that the tenant was loud and violent and it would be difficult for her daughter to study for nursing if the tenant was still living there, that the landlord also has an important job in health care and needs her sleep and that her son has disabilities and cannot be around that level of noise.

The tenant said that the landlord has been trying for a long time to evict him. He claimed that she raised the rent in January 2017 by \$100.00 without issuing a notice of rent increase and he agreed to pay it. He stated that the landlord increased his rent by \$200.00 for a six-week period in July 2017 when his friend was staying with him, which

he paid to account for the extra utilities. He claimed that the landlord is trying to raise his rent because she knows he is “making good money.” He explained that the landlord wants to renovate the rental unit so that she can re-rent it for a higher amount because she cannot afford it. He questioned why the landlord’s daughter would need a spacious two-bedroom and two-bathroom rental unit to herself.

Analysis

Subsection 49(3) of the *Act* sets out that a landlord may end a tenancy in respect of a rental unit if the landlord or a close family member 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 November 2, 2017, and filed his application to dispute it on November 9, 2017. 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 a number of ulterior motives for issuing the 2 Month Notice and it was not issued in good faith for the reasons explained below.

Throughout the hearing, the landlord did not want to talk about the previous notices or the other issues in the tenancy, despite the fact that the tenant raised the issues, claiming that she had been told by Arbitrators at previous hearings not to “disturb the good faith” requirement. However, she did respond to the tenant’s allegations, although reluctantly.

The landlord has issued six previous notices to end tenancy, four of which were 2 Month Notices and two of which were 1 Month Notices. All six notices were dismissed after RTB hearings were held. The 2 Month Notices were issued for different reasons and were found to be issued in bad faith. The landlord now has a new reason for issuing the current 2 Month Notice.

The landlord cited a number of problems with the tenant at the rental unit. She claimed that he was harassing the next door neighbour and saying it was his girlfriend when he has another woman living with him in the rental unit. She claimed that the tenant was loud and violent, that it would be difficult for her children to deal with, and that she was upset that the tenant was having different people live with him and hiding it from the landlord.

The landlord increased the tenant’s rent since January 2017 by \$100.00 from \$900.00 to \$1,000.00 total per month. She also increased his rent again in July 2017 by \$200.00 when the tenant’s friend was living with him. This shows the landlord’s continuous intent to raise the rent above the legal yearly amounts, without issuing legal notices of increase.

None of the landlord’s witnesses testified at this hearing in order to confirm their statements or to be cross-examined by the tenant, including her daughter who apparently wants to move into the rental unit. I question the landlord’s good faith intent that her daughter wants to live alone in the large two-bedroom and two-bathroom rental unit, giving that she has her own bedroom on the upper floor.

Based on a balance of probabilities and for the reasons outlined above, I find that the landlord has not met her burden of proof to show that her daughter intends to move into the rental unit in good faith.

Accordingly, I allow the tenant’s application to cancel the landlord’s 2 Month Notice. The 2 Month Notice, dated October 30, 2017, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

The landlord's application is dismissed without leave to reapply. The landlord is not entitled to an order of possession for landlord's use of property.

As the tenant was successful in his 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 October 30, 2017, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

The landlord's application is dismissed without leave to reapply. The landlord is not entitled to an order of possession for landlord's use of property.

I order the tenant to deduct \$100.00 from a future rent payment at the rental unit, in full satisfaction of the monetary award issued against the landlord 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: February 02, 2018

Residential Tenancy Branch