



Dispute Resolution Services

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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 R.M. (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 personally served the landlord with the Application and an evidentiary package on January 05, 2018. 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 landlord testified that they personally served the tenant with their evidentiary package on January 07, 2018. The tenant confirmed that they received the landlord's evidentiary package. In accordance with section 88 of the Act, I find the tenants were duly served with the landlord's evidentiary package.

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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 December 31, 2017. In accordance with section 88 of the *Act*, I find the tenants were duly served with the Two Month Notice.

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

The landlord and the tenant agreed that this tenancy began on November 28, 2016, with a current monthly rent of \$1,140.70, due on the first day of each month. The landlord confirmed that he currently retains a security deposit in the amount of \$550.00.

A copy of the signed landlord's December 31, 2017, Two Month Notice was entered into evidence. In the Two Month Notice, requiring the tenants to end this tenancy by February 28, 2018, 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 Notice of Rent Increase form showing the rent being increased from \$1,100.00 to \$1,180.00 effective as of December 01, 2017; and

- copies of text messages exchanged between the landlord and the tenants regarding the tenants paying only \$1140.70 for rent in December 2017, which is less rent than the landlord is expecting, and the landlord indicating that “then eviction is the best way.

The landlord provided in written evidence a copy of text messages exchanged between the landlord and the tenants in which the landlord explains to the tenants that the landlord’s daughter and niece are going to move into the rental unit.

The landlord testified that his daughter is graduating from school in June 2018 and he intends on having his daughter and niece move into the rental unit.

The tenant submitted that the landlord tried to raise the monthly rent by \$80.00, effective as of December 01, 2017, and that the tenants contacted the Residential Tenancy Branch where they learned that the maximum rent increase permitted for 2017 is 3.7%. The tenant stated that they paid the landlord \$1,140.70, on December 01, 2017, an amount that is equal to the allowable rent increase permitted for 2017. The tenant stated that when they informed the landlord that they would only pay the allowable rent increase, the landlord informed them that he would evict them if they did not pay what the landlord was requesting. The tenant stated that they believe the Two Month Notice is not issued in good faith as the landlord issued the Notice after the tenants refused to pay the amount of rent increase requested by the landlord.

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 January 04, 2018, and since I have found that the Two Month Notice was served to the tenants on December 31, 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 daughter and his niece are going to live in the rental unit

I further 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 for the rental unit and that is the ulterior motive for issuing the Two Month Notice to the tenants. I find that in December 2017 the landlord clearly indicated by text message that he would evict the tenants when they did not pay the amount of increased rent the landlord requested. I further find that in December 2017, the same month the landlord stated he would evict the tenants if they did not pay increased rent, the landlord gave the tenants the Two Month Notice. Even if the landlord intends on moving his daughter and niece 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 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 December 31, 2017, 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 dated December 31, 2017, is cancelled and of no force or effect.

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

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 14, 2018

Residential Tenancy Branch