



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VR1323 850 BURRARD STREET
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL

Introduction

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

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property, dated March 28, 2018 ("2 Month Notice"), pursuant to section 49.

The landlord's agent ("landlord") and the tenant 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 53 minutes in order to allow both parties to fully present their submissions.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application.

The tenant confirmed receipt of the landlord's 2 Month Notice on March 28, 2018, 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 March 28, 2018.

Issues to be Decided

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

Background and Evidence

While I have turned my mind to the tenant's documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began in June 2007. The tenant initially occupied the unit, which was a caretaker suite, while employed by the landlord. When the tenant's employment ended, the parties signed a written tenancy agreement to continue the tenancy on a month-to-month basis. Monthly rent in the amount of \$450.00 is payable on the first day each month. A security deposit was not paid for this tenancy. The tenant continues to reside in the rental unit, which is a one-bedroom, one bathroom unit.

Neither party provided a copy of the 2 Month Notice. Both parties agreed that the landlord issued the 2 Month Notice, with an effective move-out date of June 1, 2018 because the landlord or the landlord's close family member intends to occupy the rental unit in good faith.

The landlord stated that the tenant's rental unit used to be a caretaker suite, that it is common property for the 70 strata owners of the rental building, and that the strata wants it back to use as a guest suite. He said that the unit was for the 70 strata owners to use and would be booked ahead of time and payment would be made to clean and manage the unit. He claimed that this is the only common unit in the building that all strata owners own together, as all other suites are individually owned. He stated that the strata does not want the revenue from the tenant's rent anymore and the payment fees to use the unit would not be revenue but simply upkeep.

The tenant claimed that the landlord did not issue the 2 Month Notice in good faith. He maintained that the parties attended two previous hearings in June 2017 and March 2018 at the Residential Tenancy Branch ("RTB"), where the landlord's 1 Month Notice to End Tenancy for Cause ("1 Month Notice") and another 2 Month Notice, were both cancelled. The file numbers for those hearings appear on the front page of this decision. The landlord agreed that previous RTB hearings occurred but explained that the 1 Month Notice was issued in error and the 2 Month Notice indicated the wrong reason of using the unit for a caretaker suite, when the landlord actually intended it for the guest suite as noted in this hearing.

The tenant claimed that in a strata vote, 24 opposed and 17 favoured a resolution for his rental unit, referred to as a guest unit on the third floor as common property, to be renovated for \$25,000.00. He said that he thinks the strata wants to renovate and then use the unit for guest purposes. He also stated that the landlord failed to obtain the permits required in order to do the work in the unit, including plumbing and replacement of original flooring. The landlord explained that the strata would only renovate the unit if needed, as it was in the budget to complete common property improvements, but it did not want to spend \$25,000.00 to renovate it.

Analysis

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 he receives the notice. The tenant received the 2 Month Notice on March 28, 2018 and filed his application to dispute it on April 15, 2018. Therefore, the tenant is outside the fifteen day time limit under the *Act*.

As per section 64(3)(c) of the *Act*, I amend the tenant's application to grant him more time to make his application to cancel the 2 Month Notice, pursuant to section 66 of the *Act*. I accept the tenant's evidence that he was unsure how the deadline of fifteen days was counted, as he thought the deeming provisions of section 90 of the *Act* applied giving him three extra days since the notice was posted to his door. The tenant's application was filed three days late, as it was due by April 12, 2018, but it was filed on April 15, 2018. Further, the tenant did not apply past the effective date of the 2 Month Notice, which is June 1, 2018. Therefore, I find that the tenant is not barred by section 66(3) of the *Act*, from applying for more time to cancel the notice.

Accordingly, I find that the landlord has to justify, on a balance of probabilities, the basis of the 2 Month Notice, in order for it to be issued to the tenant in the first place.

Subsection 49(3) and (4) of the *Act* state that a landlord that is an individual or a family corporation may end a tenancy in respect of a rental unit where the landlord or a close family member, in good faith, intends to occupy the rental unit.

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.”

I find that the landlord has not met its burden of proof to show that it intends to occupy the rental unit in good faith. The landlord did not submit any documentary evidence for this hearing, regarding its intentions for the unit or the agreement by the strata owners. The landlord includes 70 strata owners. They intend to use the rental unit as a guest suite in order to work, sleep and for fun, as noted by the landlord during the hearing. It is a unit that must be booked ahead of time and then used accordingly. It will not be occupied continuously, only when required. The landlord failed to provide sufficient evidence that the people who would be using the unit are actually the landlord or close family members only, not other guests booking the unit using the strata owners' names. In addition, the parties had two previous hearings in the last year, where the landlord attempted to evict the tenant using two different notices to end tenancy, which questions their good faith intentions.

Based on a balance of probabilities and for the reasons outlined above, I find that the landlord has not met its onus of proof to show that the landlord issued the 2 Month Notice for the landlord or its close family members to occupy the rental unit in good faith.

Accordingly, I allow the tenant's application to cancel the 2 Month Notice. The landlord's 2 Month Notice, dated March 28, 2018, is cancelled and of no force or effect. The landlord is not entitled to an order of possession under section 55 of the *Act*.

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

Conclusion

The tenant's application to cancel the landlord's 2 Month Notice is allowed. The landlord's 2 Month Notice, dated March 28, 2018, is cancelled and of no force or effect.

The landlord is not entitled to an order of possession under section 55 of the *Act*.

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

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: June 22, 2018

Residential Tenancy Branch