



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL MNDCT FFT

Introduction

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

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice"), pursuant to section 49;
- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

The landlord confirmed receipt of the tenant's application for dispute resolution ('application'), which was served by way of registered mail on April 17, 2018. In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenants' application. As both parties confirmed receipt of each other's evidentiary materials, I find that these documents were duly served in accordance with section 88 of the *Act*.

As the tenants confirmed receipt of the 2 Month Notice dated March 29, 2018, which was served by way of registered mail on March 29, 2018, I find that this document was deemed served to the tenants on April 3, 2018, five days after mailing, in accordance with sections 88 and 90 of the *Act*.

Issues(s) to be Decided

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

Are the tenants entitled to a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement?

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

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

Both parties submitted a copy of the tenancy agreement for this hearing. Although both parties agreed that this was a tenancy that began on April 1, 2014, the landlord testified that the tenancy agreement was altered to reflect a 10 year fixed-term tenancy that ends on June 30, 2025. The landlord testified that the tenancy was a 2 year fixed-term tenancy, and the landlord had never agreed to extend the tenancy to 2025. The landlord admitted in the hearing that the only copy of the tenancy agreement they had was the one that was submitted by the landlord, which indicates a fixed-term tenancy ending in 2025. The tenants testified that the fixed-term tenancy was originally 6 years, and both parties had agreed to extend it to 10 years.

Both parties confirmed that monthly rent is currently set at \$1,400.00, payable on the first of the month. The tenants are still residing at the home.

The tenants are making a monetary claim for one month's rent for the multiple attempts by the landlord to cause them distress during this tenancy. The tenants testified that they have been subject to continuous harassment in many forms, including multiple notices to end tenancy that were cancelled by Arbitrators, and multiple attempts to increase the rent in a manner that was not compliant with the Act. The tenants included four previous decisions in their evidence to support their claim, as well as testimony that another upcoming hearing was scheduled for the following month to address yet another notice to end tenancy issued by the landlord. The tenants testified that this was a tactic by the landlord to harass them, and have caused them much distress during this tenancy.

The landlord issued the 2 Month Notice dated March 29, 2018, with an effective move-out date of May 31 2018, for the following reason:

- The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse.

The landlord provided the following background for why they had decided to issue the 2 Month Notice. They testified that the 2 Month Notice was issued as the landlord wished to move to closer to her sister, and live in a smaller home that was easier to maintain as the landlord was in her 80s.

The tenants testified that the 2 Month Notice was not issued in good faith, stating that the landlord wanted to end this tenancy in order to increase the rent, as evidenced by the landlord's multiple attempts to end this tenancy and increase the rent.

Analysis

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

I have reviewed the tenancy agreement that was submitted by the landlord. Although the landlord testified that this tenancy was a 2 year fixed-term tenancy, and not a 10 year fixed-term as testified by the tenants, the document submitted by the landlord shows that this was a fixed term tenancy that was either 6 or 10 years in length ending in 2020 or 2025. Although there is an indication that the document was changed, and initialed by one party, I find that the document still reflects a fixed-term tenancy that was to end either in 2020 or 2025, and not in 2016 as testified to by the landlord.

Section 44 of the *Residential Tenancy Act* reads in part as follows:

44 (1) *A tenancy ends only if one or more of the following applies:*

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:...

(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;

(c) the landlord and tenant agree in writing to end the tenancy;...

Section 49(2) of the Act states “a landlord may end a tenancy for a purpose referred to in subsection (3), (4), (5) by giving notice to end the tenancy effective on a date that must be

(i) not earlier than 2 months after the date the tenant receives the notice,

(ii) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and

(iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

I find that the landlord failed to provide sufficient evidence to support that the written tenancy agreement was changed without her permission or knowledge. I find the tenancy agreement to be valid, and in effect until at least June 30, 2020. Whether the tenancy is a 6 year or 10 year fixed-term, I find that the 2 Month Notice issued by the landlord on March 29, 2018 does not comply with section 49(2)(iii) of the *Act*, as stated above.

Accordingly, I allow the tenants' application to cancel the 2 Month Notice. The landlord's 2 Month Notice, dated March 29, 2018, is hereby cancelled and of no force and effect. This tenancy continues until it is ended in accordance with the *Act*.

The tenants also made a monetary claim in the amount of \$1,400.00 in compensation for the landlord's actions during this tenancy.

Section 65(1)(c) and (f) of the *Act* allow me to issue a monetary award to reduce past rent paid by a tenant to a landlord if I determine that there has been "a reduction in the value of a tenancy agreement." Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenants to prove, on a balance of probabilities, that the landlord caused them a loss, and the amount of such loss.

Residential Tenancy Branch ("RTB") Policy Guideline 16 states the following with respect to types of damages that may be awarded to parties:

An arbitrator may only award damages as permitted by the Legislation or the Common Law. An arbitrator can award a sum for out of pocket expenditures if proved at the hearing and for the value of a general loss where it is not possible to place an actual value on the loss or injury. An arbitrator may also award "nominal damages", which are a minimal award. These damages may be awarded where there has been no significant loss or no significant loss has been proven, but they are an affirmation that there has been an infraction of a legal right.

I accept the tenants' testimony and evidence that they have been subjected to multiple attempts by the landlord to end this tenancy. Both parties have attended at least five hearings from March 2016 to the present, including this one, and one further hearing is scheduled for next month.

Three of the hearings (March 15, 2016, May 18, 2016, and June 13, 2018) involve the landlord's attempt to end this tenancy by serving the tenant a 2 Month Notice to End Tenancy for Landlord's Use despite the fact that on three occasions, the Arbitrator found that this was a fixed term tenancy, and the landlord attempted to end the tenancy in a manner that did not comply with section 49(2)(iii) of the *Act*.

I find the Arbitrator, in their March 15, 2016 decision, expressed clearly in their analysis why the landlord may not end the tenancy earlier than the date specified in the tenancy agreement for landlord's use. The following excerpt is from that decision.

"Section 49 of the Act provides that where a tenancy agreement is a fixed term tenancy a landlord may end this tenancy for landlord's use not earlier than the date specified as the end of the tenancy. As the date specified as the end of the tenancy is June 30, 2025 I find that the Notice is not valid as it purports to end the tenancy earlier than the tenancy end date. The Notice is therefore cancelled and the tenancy continues."

I find that these repeated attempts, alone, demonstrate the landlord's attempt to contravene the *Act* on more than one occasion, despite her knowledge that the Arbitrators have found that this tenancy was a fixed-term tenancy, and could not be ended in manner that did not comply with the *Act* and tenancy agreement. I accept the tenants' evidence and testimony that they have been subject to distress and hardship due to landlord's deliberate and repeated attempts to end this tenancy on the same grounds

From the testimony and evidence provided for this hearing, I find that the tenants faced extreme distress as a result of the landlord's actions. Accordingly, I find the tenants are entitled to monetary compensation for the losses incurred due to the landlord's repeated refusal to recognize that the landlord is bound by section 49(2)(iii) of the *Act* when attempting to end this tenancy for the reasons provided.

As per RTB Policy Guideline 16, where no significant loss has been proven, but there has been an infraction of a legal right, an arbitrator may award nominal damages. Based on this principle, I award the tenants compensation in the amount of \$700.00 each for the two subsequent attempts at ending this tenancy in a manner that does not comply with section 49(2)(iii) of the *Act*. Accordingly, the tenants are granted \$1,400.00 in total compensation.

As the tenants were successful in their application, I allow the tenants to recover the filing fee for this application.

Conclusion

The tenants' application to cancel the landlord's 2 Month Notice is allowed. The landlord's 2 Month Notice, dated March 29, 2018, is cancelled and is of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

I issue a \$1,500.00 Monetary Order in favour of the tenants for recovery of the filing fee as well as for compensation for the losses the tenants suffered during this tenancy. I allow the tenants the above monetary award by reducing their monthly rent payments until the amount is recovered in full. In the event that this is not a feasible way to implement this award, the tenants are provided with a Monetary Order in the amount of \$1,500.00, and the landlord(s) must be served with **this Order** as soon as possible.

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 14, 2018

Residential Tenancy Branch