



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL DRI FFT LRE OLC OT

Introduction

This hearing dealt with the tenant's 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;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- a determination regarding their dispute of an additional rent increase by the landlords pursuant to section 43;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and
- authorization to recover the filing fee for this application from the landlord, 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') and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served with the tenant's application and evidence.

As the tenant confirmed receipt of the 2 Month Notice dated May 1, 2018, which was placed in his mailbox on the same date, I find that this document was duly served to the tenant in accordance with section 88 of the *Act*.

Preliminary Issue – Landlord's Evidence

The tenant testified in the hearing that he did not receive the landlord's evidence package. The landlord responded that the evidence package was served to the tenant by way of placing the documents in the tenant's mailbox "at least a month ago".

The tenant requested that the evidence as he did not have the opportunity to review and respond to the landlord's evidence package.

The landlord responded that he had served both the RTB and the tenant with his evidence package, and the documents should be admitted.

Rule 3.15 of the RTB's Rules of Procedure establishes that "the respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing"

Section 88 of the *Act* establishes the following rules for service of documents.

How to give or serve documents generally

88 *All documents, other than those referred to in section 89 [special rules for certain documents], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:*

- (a) by leaving a copy with the person;*
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;*
- (c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;*
- (d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;*
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;*
- (f) by leaving a copy in a mail box or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;*
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;*
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;*

(i) as ordered by the director under section 71 (1) [director's orders: delivery and service of documents];

(j) by any other means of service prescribed in the regulations.

Although the landlord testified that he had served the tenant in a manner required by section 88 of the *Act*, the tenant disputes this fact. The onus then shifts to the landlord to provide sufficient proof of that service. As the landlord did not provide sufficient evidence to support that the tenant was served in accordance with the *Act*, I am unable to find that the tenant was properly served with the landlord's evidence. For this reason, I am excluding the landlord's evidence package for this application.

Issues to be Decided

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

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

Is the tenant entitled to a determination regarding their dispute of an additional rent increase by the landlord?

Is the tenant entitled to an order to suspend or set conditions on the landlord's right to enter the rental unit?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The landlord testified that the tenant resides in the lower floor of the home. Rent is currently set at \$1,310.00, and the landlord issued the tenant a Notice of Rent Increase on March 26, 2018 to increase the rent to \$1,362.00 effective July 1, 2018. The Notice of Rent Increase indicates a RM as the tenant, which the tenant states is not his proper name.

On May 1, 2018 the landlord issued the 2 Month Notice 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 he had decided to issue the 2 Month Notice. They testified that the 2 Month Notice was issued as the landlord's daughter and mother wanted to occupy the suite. This daughter will be attending university, and wished to

move in for August 2018. The landlord also testified that his mother was 93 years old, and cannot climb stairs due to her mobility issues.

The tenant testified that the 2 Month Notice was not issued in good faith, and wished to have the 2 Month Notice cancelled.

The tenant is also requesting an order for the landlord to comply with the *Act*. The tenant indicated in his evidence that the landlord has attempted to refuse his rent payments, increase the rent, and enter his suite in a manner that contravened the *Act*.

The tenant indicated in his application that the landlord had verbally withdrawn his notice of rent increase. The landlord confirmed in the hearing that he was still seeking a rent increase as indicated on the Notice of Rent Increase given to the tenant.

The landlord testified in the hearing that he had entered the rental unit on one occasion as he believed his property was at risk due to the tenant's use of space heaters and "extensive use of electricity".

Analysis

Subsection 49(3) of the *Act* sets out that a landlord may end a tenancy in respect of a rental unit where the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. The landlord states that his daughter and mother intended to occupy the suite.

Although I accept the landlord's undisputed testimony that the tenant was served with the landlord's 2 Month Notice, section 52 of the *Act* requires that the Notice complies with the *Act*, specifically, that the Notice must: be in writing and must: (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the rental unit, (c) state the effective date of the notice, (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and (e) when given by a landlord, be in the approved form.

As a copy of the 2 Month Notice was not provided for this hearing, I was unable to verify that the Notice complies with the requirements of section 52 of the *Act*. Accordingly, I allow the tenant's application to cancel the 2 Month Notice. The landlord's 2 Month Notice, dated May 1, 2018, is hereby cancelled and of no force and effect. This tenancy continues until it is ended in accordance with the *Act*.

The tenant also applied for an order for the landlord to comply with the *Act*, as well as an order suspending or setting conditions on the landlord's right to enter the tenant's suite. Section 29(1)(b) states that "at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information: (i) the purpose for entering, which must be reasonable; (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees. The landlord admitted that he had entered the tenant's suite without notice at least 24 hours in advance as he was concerned that the tenant had put his property at risk. Section 29(f) allows the landlord entry if "an

emergency exists and the entry is necessary to protect life or property". I find that the landlord's decision to enter the tenant's unit could be considered a contravention of the *Act* as his evidence does not sufficiently indicate that an emergency existed where his entry was necessary to protect life or property. I find the landlord's behavior concerning, although I am not satisfied that the tenant has provided sufficient evidence to demonstrate that the landlord had failed to comply with section 29 of the *Act* to the extent that an order is necessary to suspend or set conditions on the landlord's right to enter the tenant's unit. Accordingly this portion of the tenant's application is dismissed. I do remind the landlord of his obligations under section 29 of the *Act* as stated above.

The landlord indicated in the hearing that he was not withdrawing his Notice of Rent Increase.

Section 42 of the *Act* states the following about how a Notice of Rent Increase is to be given:

Timing and notice of rent increases

42 (1) A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:

(a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first established under the tenancy agreement;

(b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this *Act*.

(2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.

(3) A notice of a rent increase must be in the approved form.

(4) If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.

I have reviewed the evidence and I find that the landlord's Notice of Rent Increase complies with section 42 (1) of the *Act*. I find that the tenant failed to provide sufficient evidence to demonstrate that the landlord had withdrawn his Notice of Rent Increase, and that the landlord refused to accept the tenant's rent. Accordingly, the tenant's application for a determination of the rent increase is dismissed without leave to reapply.

I find that the tenant is entitled to recover half of the filing fee for this application as the tenant's application has some merit..

Conclusion

The tenant's application to cancel the landlord's 2 Month Notice is allowed. The landlord's 2 Month Notice, dated May 1, 2018 is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

I allow the tenant to implement a monetary award of \$50.00 for recovery of the filing fee, by reducing a future monthly rent payment by that amount. In the event that this is not a feasible way to implement this award, the tenant is provided with a Monetary Order in the amount of \$50.00, and the landlord must be served with **this Order** as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The remainder of the tenant's application is dismissed without leave to reapply.

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: July 5, 2018

Residential Tenancy Branch