



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes DRI, CNL, MNRT, OLC, LRE

Introduction

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

- an order regarding a disputed additional rent increase, pursuant to section 43;
- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property, dated May 31, 2018 ("2 Month Notice"), pursuant to section 49;
- a monetary order for the cost of emergency repairs, pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 62; and
- an order restricting the landlord's right to enter the rental unit, pursuant to section 70.

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 70 minutes.

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 personal receipt of the landlord's 2 Month Notice on May 31, 2018, which is when the landlord said that he served the notice to the tenant. In accordance with section 88 of the *Act*, I find that the tenant was duly served with the landlord's 2 Month Notice on May 31, 2018.

At the outset of the hearing, the tenant confirmed that she did not pay an additional rent increase to the landlord. I notified her that this portion of her application was dismissed without leave to reapply.

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 a monetary order for the cost of emergency repairs?

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

Is the tenant entitled to an order restricting the landlord's right to enter the rental unit?

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 on July 1, 2013. Both parties signed two fixed term tenancy agreements, with the most recent one ending on May 31, 2018, after which it became a month-to-month tenancy. Monthly rent in the original amount of \$850.00 was previously payable pursuant to the first written tenancy agreement and monthly rent in the current amount of \$907.00 is payable on the first day of each month pursuant to the second and most recent written tenancy agreement. A security deposit of \$425.00 was paid by the tenant and the landlord continues to retain this deposit. The tenant continues to reside in the rental unit. The rental unit is the basement of a two-level house, with two bedrooms and one bathroom.

The tenant seeks to cancel the landlord's 2 Month Notice, a monetary order in the amount of \$375.85, and an order restricting the landlord's right to enter the unit and to comply with section 29 of the *Act*.

A copy of the landlord's 2 Month Notice was provided for this hearing. It states an effective move-out date of July 31, 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 he requires the rental unit so that his 28-year-old son can move in and have his own independence and privacy. He said that his son is grown up and does not want to live with his parents any longer, where he is currently residing.

The tenant disputes that the landlord issued the 2 Month Notice in good faith. She said that the landlord tricked her into signing the second written tenancy agreement raising her rent from \$850.00 to \$907.00, since she did not know that she could refuse to sign it.

The tenant stated that the landlord then asked her to sign a new third written tenancy agreement after her fixed term was to end on May 31, 2018, for \$600.00 more per month and then reduced it to a total monthly rent of \$1,100.00 total and then \$1,000.00 total. The tenant said that she met with the landlord and brought her friend with her who is also a landlord. She explained that the landlord drafted a third written tenancy agreement for a higher rent of \$1,000.00 per month. She maintained that her friend explained the new law to the landlord, that the tenant did not have to vacate the rental unit at the end of the fixed term and it would continue on a month-to-month basis, and that the landlord had to issue a notice to end tenancy for the tenant to leave. She stated that the landlord became upset by this information.

The tenant provided a copy of a text message from April 12, 2018, which the landlord agreed he sent to the tenant, indicating that if the tenant did not want to pay a higher rent of \$1,100.00 total per month, she should vacate the rental unit at the end of the fixed term on May 31, 2018, so his son could move in. Just prior to that text message, the landlord attached a copy of one page of the tenant's second written tenancy agreement showing a fixed term end date of May 31, 2018.

The tenant testified that the landlord tried to increase the rent for the tenants living on the upper floor of the same house where she lives, and they vacated because they could not afford it. She said that the unit was now empty so the landlord's son could move in there. The landlord replied by stating that his older son wanted to move upstairs and his younger son wanted to move into the tenant's rental unit. He claimed that his older son had not yet moved in upstairs because the former tenants moved out

on July 1, 2018, and he wanted to do extensive renovations to the kitchen cabinets and replace the carpet with laminate flooring and wanted to find the best price first. The landlord claimed that he did not know when his older son would do the renovations or move in upstairs.

Analysis

Overall, I found the tenant to be a more credible and forthright witness than the landlord. She testified in a calm and candid manner, was consistent throughout, and did not change her answers. I found that the landlord became upset when I asked him questions, yelled answers at me when he did not like the questions, and provided conflicting testimony while frequently changing his answers throughout the hearing.

2 Month Notice

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 May 31, 2018, and filed her application to dispute it on June 4, 2018. 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.

Both parties agreed that they attended a previous hearing before a different Arbitrator at the Residential Tenancy Branch just a month prior in June 2018. The file number for that hearing appears on the front page of this decision. Many of the same issues were raised regarding the landlord's rent increase in the second written tenancy agreement, references to a repair order for a water leak in the ceiling of the tenant's bedroom, and the landlord's attempt to have the tenant vacate the rental unit on May 31, 2018.

The landlord initially increased the tenant's rent from \$850.00 to \$907.00 per month. The landlord agreed that he sent a text message indicating that he wanted to raise the tenant's rent to \$1,100.00 per month. In the same text message, he offers the tenant the alternative option to vacate the rental unit so that his son can move in, if she did not want to pay the higher amount of rent. This clearly shows the landlord's intent is not made in good faith as his son moving in is linked directly to the tenant's refusal to pay a higher rent amount above the allowable yearly *Regulation* amount.

No witnesses testified at this hearing on behalf of the landlord in order to confirm his statements or to be cross-examined by the tenant, including his son who apparently wants to move into the rental unit. The landlord did not submit any documentary evidence for this hearing, including a letter from his son who apparently intends to move in. I question the landlord's good faith intent that his son wants to live alone in the two-bedroom and one-bathroom rental unit, giving that there is currently an empty rental unit on the upper floor of the same house. I do not accept the landlord's explanation that his other older son wants to live on the upper floor, given that this son did not testify at this hearing and that unit has been empty since July 1, 2018. Further, there have been no attempts for him to move in or even start the supposed renovations that the landlord said were planned with no timeline or cost or idea of when they would be completed.

Based on a balance of probabilities and for the reasons outlined above, I find that the landlord has not met his burden of proof to show that his son 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 May 31, 2018, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*. The landlord is not entitled to an order of possession for landlord's use of property.

Landlord's Right to Enter Rental Unit

I order the landlord to abide by section 29 of the *Act*, to provide the tenant with proper notice, prior to entering the tenant's rental unit. I do not issue any orders to restrict the landlord's right to enter the rental unit because I find that there have been no violations of section 29 of the *Act* and both parties agreed that the tenant refused entry to the landlord if he provided less than 24 hours' notice to the tenant.

Monetary Order for Emergency Repairs

I award the tenant a monetary order of \$375.85 for the cost of the emergency plumbing repair to the toilet at the rental unit on May 13, 2018. The tenant stated that the water was continuously running at the back of the toilet, she had to keep flushing the toilet to prevent overflow, and the emergency shut off valve at the back of the toilet was broken.

I find that the tenant followed the procedure outlined in section 33 of the *Act*. She was dealing with an emergency repair for a leak and plumbing toilet issue, she telephoned the landlord twice and sent him a text message once on the same date, and received no response from the landlord. I do not accept the landlord's evidence that he did not receive any calls from the tenant because nothing showed up on his phone. The tenant attempted to unsuccessfully have the former upstairs tenant look at and repair the toilet for free, he recommended that she call a plumber, and then the tenant called a plumber on an emergency basis and paid him \$375.85 on the same date. The tenant provided a copy of the receipt to the landlord by way of text message.

The tenant provided her cellular phone call log for May 13, 2018, showing that she called the landlord, provided a copy of the text message she sent him on the same date, and provided a copy of the receipt from May 14, 2018, for \$375.85 for this hearing and to the landlord, to which the landlord replied. I do not accept the landlord's contention that the tenant's receipt was fabricated because there was no breakdown of hours of labour and it was not handwritten. The landlord claimed that the cost was unreasonable but did not provide proof of the \$50.00 repair cost from his friend and \$5.00 shut off valve part, that he testified would have cost for the toilet repair. I find that the above

cost is reasonable, particularly given that the plumber was called by the tenant late at night, on a weekend, and on an emergency basis.

Conclusion

The tenant's application to cancel the landlord's 2 Month Notice is allowed. The landlord's 2 Month Notice, dated May 31, 2018, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*. The landlord is not entitled to an order of possession for landlord's use of property.

I order the tenant to deduct \$375.85 from a future rent payment at the rental unit, in full satisfaction of the monetary award issued against the landlord for the emergency repair.

I order the landlord to abide by section 29 of the *Act* and provide proper notice to the tenant prior to entering the rental unit.

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 24, 2018

Residential Tenancy Branch