



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

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

- cancellation of the landlords' Two Month Notice to End Tenancy for Landlord's Use of Property (the Two Month Notice) pursuant to section 49; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

The landlord and the tenant 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. The tenant had an advocate present to assist with submissions.

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 on September 07, 2018. The landlord confirmed that they received the Application. In accordance with section 89 of the Act, I find the landlord is duly served with the Application.

The landlord also acknowledged receipt of the tenants' evidence which was personally served on September 28, 2018, and October 01, 2018. In accordance with section 88 of the Act, I find that the landlord is duly served with the tenant's evidence.

The tenant acknowledged receipt of the landlord's evidence, including digital platforms, and that they were able to review it. In accordance with section 88 of the Act, I find that the tenant is duly served with the landlord's evidence.

The tenant confirmed that they received the Two Month Notice on August 24, 2018. In accordance with section 88 of the Act, I find that the tenant was duly served with the Two Month Notice.

Issue(s) to be Decided

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

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

Background and Evidence

The landlord and the tenant agreed that this tenancy commenced sometime in 2008 with a current monthly rent in the amount of \$622.00, due on the first day of each month. The landlord and the tenant agreed that a security deposit in the amount of \$300.00 was paid to the landlord.

A copy of the landlord's signed August 24, 2018, Two Month Notice was entered into evidence. In the Two Month Notice, requiring the tenant to end this tenancy by October 31, 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 tenant entered into written evidence:

- A copy of a written submission with a timeline of events that have occurred during the tenancy stating that the landlord and the tenant have had discussions about renting a room out, with the tenant wanting to bring a roommate in and the landlord wanting to rent the room out in a separate agreement. The submission indicates that the landlord has previously prepared a notice to evict the tenant, which he was dissuaded from by the tenant but that on August 24, 2018, the landlord served the Two Month Notice and stated that their niece or nephew would live there. The submission concludes that after the Two Month Notice was served the landlord changed their story and said that they were going to occupy the rental unit with their family which includes the niece or nephew as well. The submission states that the landlord has not issued the Two Month Notice in good faith as they are not happy about the amount of rent being paid for the space;

The landlord entered into written evidence:

- Copies of videos of the landlord's own living accommodations as well as a unit being rented to another tenant in the basement;
- A copy of a written submission from the landlord dated October 04, 2018, in which the landlord states that their current living accommodations are overcrowded and with the arrival of another family member will make it more crowded;
- A copy of a written submission from the landlord dated October 09, 2018, in which the landlord states that the tenant somehow ended up taking over a room that is not a part of the tenancy agreement and was subletting it without the landlord's consent. The landlord states that the tenant's "girlfriend is living there as well with an exclamation point at the end of the sentence. The landlord submits that he always intended to move into the house where the rental unit is located due to it being close to his work and, with their nephew due to arrive, the landlord decided to issue the Two Month Notice. The landlord indicates that the tenant is welcome to confirm that the landlord has moved into the rental unit;

The landlord testified that they intend on moving their family into the house that the rental unit is located in due to being overcrowded in their current house. The landlord submitted that they have five people living in a three bedroom house with another family member set to arrive at the end of October 2018. The landlord stated that his niece currently lives with him and a nephew is going to be arriving. The landlord indicated that his family only has one bathroom for all family members as the other bathroom is in a unit being rented in the basement which the landlord does not have access to.

The tenant stated that there have been changes in the rental arrangements with the landlord which has resulted in the tenant currently renting space on the main floor. The tenant stated that his daughter just recently moved out of the rental unit. The tenant indicated that the landlord has recently become frustrated with the tenant and was going to evict the tenant before but did not end up doing so.

The tenant testified that the Two Month Notice is a result of the landlord wanting to end the tenancy for reasons other than what they have indicated on the Two Month Notice as they are not happy with the amount of rent being paid. The tenant stated that initially it was a niece or nephew and then their reason changed when they realized that they could not evict the tenant just to have their niece or nephew live in the rental unit.

The advocate indicated that there is another occupant living in the rental unit and there is no evidence that the occupant has been served any notice to end tenancy. The

advocate submitted that the landlord has not proven their good faith as they have only confidently asserted that they are going to live in the rental unit but has not actually provided any evidence to prove their intentions.

The landlord stated that the other occupant has already agreed to move out of the rental unit and is leaving at the end of October 2018. The landlord testified that the rent has never been an issue and is not the reason for issuing the Two Month Notice.

Analysis

Section 49 of the *Act* allows a landlord to end a tenancy if the landlord or a close family member is 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 Notices were 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 September 04, 2018, and since I have found that the Two Month Notice was served to the tenant on August 24, 2018, I find that the tenant has applied to dispute the Two Month Notice within the time frame provided by section 49 of the *Act*.

RTB Policy Guideline #2 establishes that good faith is a legal concept and means that a party is acting honestly when doing what they say they are going to do or what they are required to do under the legislation or tenancy agreement. 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 sufficient documentary evidence to corroborate their submission that the rental unit is going to be occupied by the landlord or a close family member. I find that the only evidence that the landlord has provided are written statements indicating their intention to occupy the rental unit due to being overcrowded in current house and three videos which show the landlord's current accommodations.

I find that the videos provided do not sufficiently demonstrate the landlord's intentions of moving into the rental unit as it only shows the current living conditions, with all occupants seeming to have their own space. I find that there is no evidence in the videos that the landlord is intending to move such as boxes being packed or any other activity which would suggest that the occupants are preparing to move. Although it is not necessary for the landlord to move at the end of October 2018 to fulfill the purpose on the Two Month Notice, a video showing the current living accommodations is not conclusive evidence of the landlord's intent to move.

The landlord states that their nephew is going to be arriving at the end of October 2018, but there is no actual evidence to support the landlord's statement which would prove that there is going to be an additional occupant in the landlord's current house. I find that it is not sufficient to state the circumstances which require the landlord to issue the Two Month Notice; the landlord must provide evidence to support their testimony when good faith is called into question.

In the same way that the landlord has not proven the arrival of their nephew, I find that there is another occupant in the rental unit and that the landlord has not provided any conclusive documentary evidence, over and above their testimony, to prove that the occupant is going to move out of the rental unit at the end of October 2018 or at any point in the future.

Although the landlord may intend to occupy the entire rental unit, I find that they have failed to provide sufficient evidence over and above their testimony that they intend on doing what they have said they will do. I find that it is not sufficient for the landlord to prove their intention by inviting the tenant to confirm that the landlord is occupying the rental unit after the tenant moves out.

I find that in the landlord's written submission dated October 09, 2018, they provide a brief timeline of events and express their displeasure at the tenant subletting a room as well as having the tenant's girlfriend living in the rental unit. I find that they indicate their intention to move into the rental unit but that they have written as much about their circumstances with the tenancy as they have about their actual intention to occupy the

rental unit. I find that the landlord having indicated their displeasure with the tenant's sublet and girlfriend living in the rental unit indicates an ulterior motive for ending the tenancy and negates the honest intention of the landlord.

For the above reasons I find that the landlord has not issued the August 24, 2018, Two Month Notice to the tenant in good faith as I find that the landlord may have an ulterior motive for seeking to end the tenancy due to being frustrated with the tenant for various reasons. Therefore, the Two Month Notice dated August 24, 2018, is set aside and this tenancy will continue until ended in accordance with the *Act*.

As the tenant has been successful in this application, I allow them to recover their filing fee from the landlord.

Conclusion

The tenant is successful in their Application. The Two Month Notice dated August 24, 2018, 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 tenant 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: October 23, 2018

Residential Tenancy Branch