



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 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 September 5, 2018 ("2 Month Notice"), pursuant to section 49;
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord and her agent and the tenant and his advocate attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that her agent had permission to speak on her behalf. The tenant's advocate did not testify at this hearing. This hearing lasted approximately 46 minutes.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package and the tenant confirmed receipt of the landlord's written evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application and the tenant was duly served with the landlord's written evidence package.

The tenant confirmed receipt of the landlord's 2 Month Notice on September 5, 2018, which is when the landlord said that she served the notice to the tenant. 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 September 5, 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 for landlord's use of property?

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

Background and Evidence

While I have turned my mind to the 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 approximately 13 years ago. Monthly rent in the current amount of \$660.00 is payable on the first day of each month. The tenant continues to reside in the rental unit. The rental unit is the basement of a two-level house, with other tenants living upstairs.

The tenant seeks to cancel the landlord's 2 Month Notice and to recover the filing fee paid for this application.

A copy of the landlord's 2 Month Notice was provided for this hearing. It states an effective move-out date of November 30, 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's agent testified that the landlord requires the rental unit so that she can personally move in. He stated that she cannot afford to live in a separate unit because she is carrying two mortgages and paying rent for her business. The landlord provided receipts for \$2,500.00 for the rent for her business. She also provided other financial documents regarding her mortgage. The landlord's agent explained that these financial issues have been ongoing for three to four years and that the landlord is in financial ruin and at risk of losing her home. He maintained that he has personally been with the landlord upstairs at the rental property and has heard the tenant yelling downstairs in the basement. The landlord testified that she is scared of the tenant because of his yelling and she does not like it when he invites his advocate over to his rental unit. The landlord's agent testified that the landlord cannot move upstairs in the rental property because there is a family living there with a child going to school and they have a fixed

term lease where they pay a higher rent of \$1,000.00 per month. He said that the tenant has no fixed term lease just a month-to-month agreement, pays less rent, and lives in a smaller unit.

The tenant disputes that the landlord issued the 2 Month Notice in good faith. He said that the landlord has given him four letters, two dated May 31, 2018, one dated July 22, 2018, and one dated September 4, 2018, indicating that the landlord wants to raise his current rent from \$660.00 to \$850.00. He provided these letters which indicate the tenant has to either pay \$190.00 more rent per month for a total of \$850.00 himself, get a roommate to help him pay, or move out. The landlord confirmed sending the letters to the tenant as well as the content. The tenant claimed that he cannot afford to pay this higher rent and it was extortion by the landlord. He said that the landlord has been increasing his rent in the last four years, while the landlord said that it was the last five to six years. The tenant provided a copy of a Notice of Rent Increase from January 2013 raising his rent by \$20.00 from \$550.00 to \$570.00 and a Residential Tenancy Branch ("RTB") application from January 2016 where the landlord requested an additional rent increase of 4% from \$620.00 to \$635.00. The tenant explained that there was no RTB hearing and he voluntarily paid the above requested amounts to the landlord. He said that his rent was just increased as of May 1, 2018, pursuant to a Notice of Rent Increase from \$635.00 to \$660.00.

Analysis

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 September 5, 2018, and filed his application to dispute it on September 8, 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.

The landlord sent four letters to the tenant between May 31, 2018 and September 4, 2018, before she issued the 2 Month Notice to him on September 5, 2018. The letters state that the landlord wants to increase the tenant's rent from \$660.00 to \$850.00, which is an increase of \$190.00 and above the allowable yearly *Residential Tenancy Regulation* ("Regulation") amount of 4% for 2018 and 2.5% for 2019, particularly when his rent was just increased in May 2018. It offers the tenant the option to pay the higher amount alone, get a roommate to pay the higher amount, or move out. The landlord confirmed that she sent these letters to the tenant and asked for higher rent. The tenant confirmed that he refused to pay the higher rent. This clearly shows the landlord's intent is not made in good faith as her moving in is linked directly to the tenant's refusal to pay a higher rent amount above the allowable yearly *Regulation* amount.

The landlord also has an alternative option to move upstairs in the same house, but refuses to do so, indicating there is fixed term lease, which she did not produce, and there is a family with a child going to school, none of whom testified at this hearing. The landlord mentioned other issues with the tenant, including the fact that she is scared of him, she and her agent have heard the tenant yelling when they were upstairs in the same house, and they do not like the tenant's advocate coming over to his rental unit.

Based on a balance of probabilities and for the reasons outlined above, I find that the landlord has not met her burden of proof to show that she 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 landlord's 2 Month Notice, dated September 5, 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.

As the tenant was successful in this application, I find that he is entitled to recover the \$100.00 filing fee from the landlord.

Conclusion

The tenant's application to cancel the landlord's 2 Month Notice is allowed. The landlord's 2 Month Notice, dated September 5, 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 \$100.00 from a future rent payment at the rental unit, in full satisfaction of the monetary award for the filing fee.

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 25, 2018

Residential Tenancy Branch