



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, RR, FFT

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 (the 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;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- 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 make submissions, to call witnesses and to cross-examine one another.

As both parties were present service was confirmed. The tenant confirmed receipt of the landlord's 2 Month Notice dated July 16, 2018. The landlord confirmed receipt of the tenant's application for dispute resolution and evidence. The tenant confirmed receipt of the landlord's evidentiary materials. Based on the testimonies of the parties I find that each party was served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

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

Should the landlord be ordered to comply with the Act, regulations or tenancy agreement?

Is the tenant entitled to reduce rent for services or facilities not provided?

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

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here. The tenant chose to focus much of their testimony and evidence on issues unrelated to the application such as the landlord's business and debts. The principal aspects of the tenant's claims and my findings around each are set out below.

There have been numerous previous hearings in regards to this tenancy. There are also other pending hearings. The rental unit is a floor in a detached home. The landlord occupies the other portion of the detached home with his daughter. The current monthly rent is \$1,362.00 payable on the first of each month.

On July 16, 2018 the landlord issued a 2 Month Notice with the reason given for the tenancy to end as:

- 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 testified that they intended for their adult daughter to occupy the rental suite. The landlord said that their daughter is attending post-secondary education and they wanted to afford her greater independence while continuing to provide for her. The landlord also said that he operates a home business and would use portions of the rental suite to conduct business during some hours of the day.

The landlord confirmed that they have issued a previous 2 Month Notice for the same reason on May 1, 2018. The landlord said that 2 Month Notice was cancelled at a previous dispute resolution hearing as they were unable to show it had been signed and completed in accordance with section 52 of the *Act*.

The landlord had issued a previous 1 Month Notice to End Tenancy for Cause on July 5, 2018, and applied for an early end to the tenancy on July 10, 2018. Both of these attempts to end the tenancy were dismissed at earlier hearings.

At the hearing the landlord also requested that the RTB issue an order that the tenant take down videos which they have uploaded on various internet sites which they characterize as hurtful and libelous. ~~The landlord also orally requested that the tenant~~

The tenant seeks an order that the landlord comply with the Act by ceasing to issue further Notices to End Tenancy. The tenant applies for a reduction in rent of \$15,500.00 for the loss of services. The tenant submits that the landlord has turned off appliances and denied services that are implicitly included in the tenancy agreement.

Analysis

Where a tenant applies to dispute a 2 Month Notice within the time limit, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 2 Month Notice is based. The landlord claims that they and their daughter will occupy the rental unit.

The tenant disputes the intention of the landlord and points to the fact that the landlord has issued multiple Notices to End Tenancy in the past. I find that the tenant is making a good faith argument.

Residential Tenancy Branch Policy Guideline number 2 notes that good faith is an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage. A claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End the Tenancy.

This Guideline reads in part as follows:

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 they do not have an ulterior motive for ending the tenancy.

The tenant has raised the good faith intention of the landlord which I find has significant basis. In the present situation where the landlord has issued multiple Notices to End Tenancy it is reasonable to question the intention of the landlord. The landlord has issued an earlier 2 Month Notice on the same basis. When that Notice was cancelled at a previous hearing for insufficient evidence the landlord began issuing other notices. The landlord issued a 1 Month Notice to End Tenancy for Cause on July 5, 2018 and applied for an Early End to the Tenancy on July 10, 2018 prior to issuing the present 2 Month Notice on July 16, 2018. The landlord also testified that there are ongoing disputes with the tenant involving disparaging comments made in online videos.

Based on the evidence, I find that there is sufficient doubt about the good faith intention of the landlord in issuing the 2 Month Notice. I find it more likely that the landlord is attempting to end this tenancy and has issued the 2 Month Notice as well as other Notices towards that end. It is apparent that this is an adversarial relationship with both parties complaining about the other. Under the circumstances I find it more likely that the 2 Month Notice was issued as part of the landlord's ongoing campaign to end this tenancy rather than an honest intention to use the rental unit as indicated. Consequently, I allow the tenant's application and cancel the 2 Month Notice. This tenancy continues until ended in accordance with the *Act*.

I find insufficient evidence in support of the remaining portions of the tenant's application. The landlord has issued only 2 earlier Notices to End Tenancy. While those were ultimately cancelled and the tenancy upheld I do not find that the frequency or volume of Notices to be so unreasonable as to warrant an order that the landlord cease issuing Notices. I dismiss this portion of the tenant's application.

The tenant seeks a rent reduction of \$15,500.00 for services or facilities not provided. I find that the tenant has not shown on a balance that there is a tenancy agreement providing that services are required or that there have been services withheld. I find the tenant's suggestion of a monetary award of \$15,500.00, the equivalent of approximately 11 month's rent to be wholly out of proportion with what would be reasonable and not supported by the evidence. Consequently, I dismiss this portion of the tenant's application.

As the tenant's application was only partially successful I decline to issue an award for recovery of filing fees.

Conclusion

The 2 Month Notice is cancelled and of no further force or effect. This tenancy continues until ended in accordance with the Act.

The balance 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: September 14, 2018

Residential Tenancy Branch