



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNL, LRE, RP

Introduction

On July 26, 2018, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting to cancel a 10-Day Notice to End Tenancy, to cancel a Two-Month Notice to End Tenancy, to restrict the Landlord from entering the rental unit and to order the Landlord to complete repairs. The matter was set for a participatory hearing via conference call.

The Landlord, the Tenant, the Tenant’s spouse and the Tenant’s Advocate attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The Landlord testified that he submitted an evidence package; however, did not serve the evidence package to the Tenant, in accordance with the *Residential Tenancy Branch - Rules of Procedure*. The evidence that the Landlord forwarded to the Residential Tenancy Branch was not admitted for reference during the hearing.

The Landlord acknowledged that he received the amendment package and attached evidence that the Tenant sent to him via registered mail, in accordance with Section 88 of the Act, and this evidence was admitted and referred to during the hearing.

The Landlord served a 10-Day Notice to End Tenancy on the Tenant and then, shortly after, a Two-Month Notice to End Tenancy. The Landlord provided conflicting evidence regarding the 10-Day Notice to End Tenancy and acknowledged that the Two-Month Notice to End Tenancy was served with a new vacate date. The Landlord stated that he would like to pursue the end of tenancy as addressed with the Two-Month Notice to End Tenancy. As a result, I cancel the 10-Day Notice to End Tenancy, issued in August 2018.

The Tenant applied for Dispute Resolution to address several issues; however, the priority issue was whether the tenancy would continue or not. I was also aware that we would not have the time to get to all the issues during today's hearing. In accordance with Rule 2.3 in the *Residential Tenancy Branch – Rules of Procedure*, I dismiss the Tenant's Application to cancel the 10-Day Notice, to restrict the Landlord from entering the rental unit, and to order the Landlord to complete repairs with leave to reapply.

Issue to be Decided

Should the Two-Month Notice to End Tenancy for Landlord's Use of Property, dated August 2, 2018, be canceled, pursuant to Section 49 of the Act?

Background and Evidence

The terms of this long-term tenancy were not well established and no Tenancy Agreement was submitted as evidence by either party. The Tenant and the Landlord did agree that the tenancy was month-to-month and that the rent of \$660.00 was due on the first of each month. They couldn't find consensus for when in the year 2000, the tenancy began or if the Landlord currently held \$150.00 or \$300.00 of the security deposit.

The Landlord testified that he had been to the residential property to store some building supplies and the Tenant became confrontational and asked for proper notice from the Landlord before he attended the rental unit. The Landlord stated that he followed up with the service of proper notice, in the form of the 10-Day Notice to End Tenancy for Unpaid Rent (the "10-Day Notice"). The Landlord claimed that the Tenant had some outstanding rent from February or March or April of 2016 in the amount of \$720.00 and therefore, served the 10-Day Notice on August 2, 2018.

The Landlord stated that he required some more storage for his vehicles and building supplies; therefore, served the Tenant a Two-Month Notice to End Tenancy for Landlord's Use of Property (Two-Month Notice), on Aug 2, 2018, by handing it to him in person. The Landlord noted on Page 2 of the Two-Month Notice that he intended to occupy the rental unit at the end of the tenancy. The move-out date for the Tenant, as noted on the Two-Month Notice, is October 31, 2018.

The Landlord stated that he planned on using the basement of the residential property as a shop and would be moving some of his work vehicles and fence building equipment into the yard.

The Tenant testified the Landlord had been coming into the residential property without any notice and wanting to store building materials and fencing on the property. The Tenant feels that this is dangerous for the Tenant's young children and also interferes with their extensive vegetable garden.

The Tenant testified that after asking the Landlord for proper notice, the Landlord served the Tenant the 10-Day Notice, even though he has never missed a rent payment in eighteen years and that the rent is forwarded automatically to the Landlord. The 10-Day Notice indicated that the Tenant did not pay \$720.00 of rent on March 1, 2015. It also showed that the Landlord signed it on August 23, 2018, and that the Tenant needed to move out of the rental unit by August 2, 2018. The Tenant was confused by the 10-Day Notice and disputed it by applying for Dispute Resolution and sending the Notice of Hearing to the Landlord via registered mail.

The Advocate for the Tenant stated the Canada Post website indicated that the Tenant's Notice of Hearing, to dispute the 10-Day Notice, was sent on July 27, 2018, that a notice card was left at the Landlord's residence on July 30, 2018 and that the Landlord picked up and signed for the package on August 3, 2018. The Advocate provided the tracking number for the package. The Tenant testified that the Two-Month Notice, although it was dated as August 2, 2018, was actually delivered to the Tenant on August 3, 2018, and that this was witnessed by the Tenant's wife. The date of delivery is noted in hand-writing and signed by the Tenant's wife, on the copy of the Two-Month Notice submitted by the Tenant.

The Tenant stated that he believes that the 10-Day Notice was issued as a spiteful reaction to the Tenant asking the Landlord to properly notify the Tenant when attending the rental unit. The Tenant disputed the 10-Day Notice and the Landlord immediately

served the Tenant the Two-Month Notice on the same day as the LL picked up the Tenant's Notice of Hearing. The Tenant believes that the Landlord has ulterior motives to end the tenancy. The Tenant would like the tenancy to continue and would like the Landlord to fulfill his responsibilities as a Landlord in accordance with the Act.

Analysis

Section 49(3) of the Act states that a Landlord may end a tenancy in respect of a rental unit if the Landlord intends in good faith to occupy the rental unit.

Two-Month Notices have a good faith requirement. *Residential Tenancy Policy Guideline #2 - Good Faith Requirement when Ending a Tenancy*, helps explain this "good faith" requirement:

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.

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.

During the hearing the Landlord stated that as a result of the Tenant asking for proper notice, that the Landlord responded by issuing "proper notice" in the form of the 10-Day Notice to End Tenancy. Although I am not making any findings as to the validity of the 10-Day Notice, I do find that both the testimony of the Landlord and the actions of serving a 10-Day Notice on the Tenant for an unsupported amount of rent that was due sometime in 2015 or 2016, brings the question of good faith to the intentions of the

Landlord and further, supports the Tenant's claim of an ulterior motive for serving the subsequent Two-Month Notice.

I accept the testimony of the Tenant that the Landlord issued the Two-Month Notice to End Tenancy on the same day that the Landlord received the notice that the Tenant was disputing the Ten-Day Notice. Although, the Landlord indicated that he served the Two-Month Notice on August 2, 2018, he has no proof of the service. The Tenant submitted a copy of the Two-Month Notice with his wife's signature, the noted date on which the Two-Month Notice was received from the Landlord and testified that it was on August 3, 2018. It appears that the Landlord served the Two-Month Notice before signing for the Notice of Hearing package on August 3, 2018; however, I find on a balance of probabilities, that the Landlord likely knew that the Tenant was disputing the 10-Day Notice, as the Landlord had previously received the Canada Post notification, and therefore, the Landlord issued the Two-Month Notice.

I find that the Landlord's good faith for ending the tenancy via the Two-Month Notice has been called into question. The Landlord did not submit any evidence to support his testimony that he intends to occupy (move some of his excess supplies into) the rental unit; nor did the Landlord provide sufficient evidence to demonstrate that he does not have an ulterior motive for ending the tenancy. When I consider the above testimony, evidence, Policy Guidelines and findings, I find that the Landlord has not issued the Two-Month Notice in good faith, in accordance with Section 49(3) of the Act. As a result, I find in favour of the Tenant and cancel the Two-Month Notice.

The tenancy will continue until ended in accordance with the Act.

Many issues were raised during the hearing and I would suggest that all parties review the following Sections of the Act as guidance for the ongoing tenancy.

In relation to unpaid rent from 2015/2016, please see Section 60 of the Act.

In relation to Tenant's rights to quiet enjoyment and Landlord's right to entry, see Sections 28, 29 and 30 of the Act.

In relation to the obligations for Landlord and Tenant to repair and maintain the rental unit, see Section 32 of the Act.

These Sections of the Act can be found in the *Residential Tenancy Act* on the Residential Tenancy Branch's website.

I would further recommend that any communications between the Landlord and the Tenant be in written form for the purposes of clarity and to act as a record.

Conclusion

Although dealt with as a Preliminary Matter, for clarity, I cancel the 10-Day Notice to End Tenancy without leave to reapply.

The Tenant's Application to restrict the Landlord from entering the rental unit and to order the Landlord to complete repairs is dismissed with leave to reapply.

The Two-Month Notice to End Tenancy for Landlord's Use of Property, dated August 2, 2018, is canceled, pursuant to Section 49 of the Act.

This tenancy will continue until ended in accordance with the Act.

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 17, 2018

Residential Tenancy Branch