



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNL, CNL-4M, OLC, RP, FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) and two Amendments to an Application for Dispute Resolution (the “Amendments”) that were filed by the Tenant under the *Residential Tenancy Act* (the “Act”), seeking cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”), cancellation of a Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Two Month Notice”), cancellation of a Four Month Notice to End Tenancy for Demolition, Renovation, Repair, or Conversion of a Rental Unit (the “Four Month Notice”), an order for the Landlord to comply with the Act, regulation or tenancy agreement, an order for the Landlord to make repairs to the rental unit or property, and recovery of the filing fee.

I note that section 55 of the Act requires that when a tenant submits an Application seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with section 52 of the Act.

The hearing was convened by telephone conference call and was attended by the Tenant, the Tenant’s witness (the “Witness”) and the Landlord, all of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. Neither party raised any concerns about service of the Application, Notice of Hearing or the documentary evidence before me for consideration.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”); however, I refer only to the relevant facts and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be e-mailed to them at the e-mail addresses confirmed in the hearing.

Preliminary Matters

Preliminary Matter # 1

Although the Landlord acknowledged receipt of the Amendment dated August 23, 2018, seeking cancellation of the Four Month Notice and the 10 Day Notice, he denied receipt of the Amendment dated September 4, 2018, seeking cancellation of the Two Month Notice.

The Tenant testified that the Amendment dated September 4, 2018, was placed in the Landlord’s mailbox on September 4, 2018, in the presence of a witness. The Tenant called the Witness, who testified that he

attended the Landlord's residence on September 4, 2018, and witnessed the Tenant place paperwork in the Landlord's mailbox.

I went over the Amendment dated September 4, 2018, and the attached documents before me and the Landlord confirmed that he had received one of the pages attached to the September 4, 2018, Amendment; however, he reiterated that the Amendment itself was not received.

Based on the testimony of the Tenant and the Witness, coupled with the fact that the Landlord acknowledged receipt of at least one of the documents submitted to the Residential Tenancy Branch (the "Branch") with the above noted amendment, I find that the Tenant has satisfied me, on a balance of probabilities, that the Amendment dated September 4, 2018, was served as described. As a result, I accept this Amendment and the attached documentary evidence for consideration in the hearing.

Preliminary Matter #2

In the Application the Tenant sought multiple remedies under multiple sections of the *Act*, a number of which were unrelated to one another. Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As the Tenant applied to cancel a 10 Day Notice, a Two Month Notice, and a Four Month Notice, I find that the priority claims relate to whether the tenancy will continue or end. As the remaining claims by the Tenant for an order for the Landlord to comply with the *Act*, regulation or tenancy agreement, and an order for the Landlord to make repairs to the rental unit or property are unrelated to the above noted notices to end tenancy, I therefore exercise my discretion to dismiss these claims with leave to reapply. The hearing therefore proceeded only on the Tenant's Application seeking cancellation of the three notices to end tenancy and recovery of the filing fee.

Issue(s) to be Decided

Is the Tenant entitled to cancellation of the 10 Day Notice?

Is the Tenant entitled to cancellation of the Four Month Notice?

Is the Tenant entitled to cancellation of the Two Month Notice?

If the Tenant is unsuccessful in cancelling any of the above notices to end tenancy, is the Landlord entitled to an Order of Possession pursuant to section 55 of the *Act*?

Is the Tenant entitled to recovery of the filing fee pursuant to section 72 of the *Act*?

Background and Evidence

The parties agreed that a verbal tenancy agreement is in place for a tenancy that began 5-6 years ago and that rent in the amount of \$1,600.00 is due on the first day of each month. The parties agreed that the Tenant rents an entire single-family home with an upper and lower suite, that the Tenant resides in the

lower suite, and that she has permission from the Landlord to rent out the upper suite to help pay the \$1,600.00 in rent, should she wish to do so.

The Landlord testified that the Tenant did not pay the full rent as required on August 1, 2018, and as a result, a 10 Day Notice was served. The 10 Day Notice in the documentary evidence before me, dated August 12, 2018, has an effective vacancy date of August 23, 2018, and states that the reason for ending the tenancy is because the Tenant failed to pay \$50.00 in rent due on August 1, 2018. The Tenant testified that this was a bank error and both parties agreed that the \$50.00 owed for August was received by the Landlord within 5 days of the date the 10 Day Notice was served.

The Landlord stated that the rental unit is older and as a result of an inspection on July 20, 2018, he determined that it needs to be remodelled. As a result, the Landlord stated that a Four Month Notice was personally served on the Tenant on July 30, 2018. The Four Month Notice in the documentary evidence before me is signed by the Landlord but not dated and states that the effective vacancy date of the notice is November 30, 2018. The Four Month Notice states that the reason for ending the tenancy is because the Landlord intends to perform renovations or repairs that are so extensive that the rental unit must be vacant. In the Four Month Notice and in the hearing the Landlord explained that he intends to remove some walls and alter the layout of the kitchen which will require plumbing and electrical work, replace the sink, shower, and vanity in the basement suite bathroom, remove and replace old flooring, retexture ceilings, and paint the entire rental unit. While the Landlord acknowledged that an electrical permit will be required and possibly a plumbing permit, he stated he has not sought or received these permits as it is possible they will do an addition to the home as well.

The Landlord stated that the nature of the renovations are such that the rental unit would be uninhabitable and that in any event, the home may also have asbestos which would make it impossible for the Tenant to remain in the home during renovations.

The Tenant acknowledged receipt of the Four Month Notice on July 30, 2018, and agreed that the rental unit is older and in need of repairs; however, the Tenant argued that some of the repairs sought by the Landlord are unnecessary and that in any event, the Landlord has not served the Four Month Notice in good faith as he is simply attempting to end the tenancy due to her request that he make repairs to the rental unit pursuant to section 32 of the *Act*. In support of her testimony she pointed to text messages between herself and the Landlord regarding her requests for repairs. The Landlord acknowledged that there have been disagreements between them but denied that the Four Month Notice has been served as a result.

Further to this, the Landlord stated that his son also intends to move into the rental unit and as a result, a Two Month Notice was served. The Two Month Notice in the documentary evidence before me, dated August 24, 2018, states that it was posted to the door of the rental unit or placed in the mailbox on August 25, 2018. The Two Month Notice has an effective vacancy date of October 31, 2018, and states that the reason for ending the tenancy is because the rental unit will be occupied by the Landlord or their close family member.

The Tenant stated that it makes no sense that the Landlord is both intending to renovate and repair the rental unit in a manner that requires it to be vacant while also asserting that she must move out because the Landlord's son is moving in. The Tenant again argued that this notice has been issued in bad faith as the Landlord is simply seeking to end the Tenancy. In response the Landlord acknowledged that there will

be periods in which his son would also need to vacate the rental unit for the renovations and repairs but stated he does intend to have his son move in as his son's current tenancy agreement ends on October 31 or November 1, 2018.

Both parties agreed that no compensation has been provided to the Tenant pursuant to section 51 of the *Act* in relation to either the Two Month Notice or the Four Month Notice.

Analysis

As both parties agreed that the Tenant paid the outstanding rent noted in the 10 Day Notice within 5 days of being served with the 10 Day Notice, I grant the Tenants claim for cancellation of the 10 Day Notice pursuant to section 46(4) of the *Act*.

Section 52 of the *Act* states that in order to be effective, a notice to end tenancy must be signed and dated. As the Four Month Notice in the documentary evidence before me is signed but not dated, I find that it does not comply with section 52 of the *Act*. Given the limited requirements for a notice to end tenancy to be valid and the nature of the information omitted, I do not find it reasonable or appropriate in the circumstances to amend the Four Month Notice to comply with section 52 of the *Act*, pursuant to section 68 of the *Act*.

Further to this, section 49(6)(b) of the *Act* states that a landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to renovate or repair the rental unit in a manner that requires the rental unit to be vacant. In the hearing the Landlord stated that permits will be required for the proposed electrical work and possibly the proposed plumbing work which have not yet been applied for or obtained. As a result, I find that the Landlord has failed to satisfy me that he has all the permits and approvals required by law to renovate or repair the rental unit.

Based on the above, I grant the Tenants claim for cancellation of the Four Month Notice as I find that it does not comply with section 52 of the *Act* and the Landlord has not satisfied me, pursuant to rule 6.6 of the Rules of Procedure, that he had cause pursuant to section 49(6)(b) of the *Act*. I therefore order that the Four Month Notice is cancelled and of no force or effect.

Having made this finding I will now turn my mind to the matter of the Two Month Notice. In the hearing the Tenant alleged that both the Four Month Notice and the Two Month Notice have not been served in good faith as the purpose stated for ending the tenancy in the Two Month Notice is contrary to the stated purpose for the Four Month Notice which was served on her less than one month prior. The Tenant also alleged that the Landlord is simply seeking to evict her by any means possible and pointed to text messages in the documentary evidence before me in support of this claim. The Landlord did not deny that there has been conflict between them but stated that the Two Month Notice has been served in good faith as he is simply attempting to exercise his rights under the *Act*.

Residential Tenancy Policy Guideline (the "Policy Guideline") #2 defines "good faith" as 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. The Policy 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 Policy Guideline also 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.

Although the Landlord alleged that his son intends to move into the rental unit at the end of his tenancy on October 31, 2018, or November 30, 2018, the Landlord did not provide a copy of his son's tenancy agreement, a statement from his son explaining his intentions to move in, or call his son as a witness in the hearing to support this his testimony. Further to this, I ultimately find that the text messages provided by the Tenant and the testimony provided by both parties in the hearing satisfies me, on a balance of probabilities that the Landlord is seeking to end the tenancy due to his disagreement with the Tenant regarding her request for renovations and repairs. It appears to me that the Landlord is simply seeking to end the tenancy, in whatever means possible in order to avoid any further disagreements with the Tenant and any responsibilities he may have pursuant to section 32 of the *Act* to maintain the residential property throughout the tenancy.

Further to this, I find that the Two Month Notice served less than one Month after the Four Month Notice, has a stated purpose that is in stark contrast with that given in the Four Month Notice for ending the tenancy. I find it unreasonable for the Landlord to assert in the Four Month Notice that renovations are required to the rental unit which are so extensive in nature that they require the rental unit to be vacant, only to serve a different notice a few weeks later asserting that the rental unit must be vacated by the Tenant as it will be occupied by the Landlord's son. Although the Landlord stated that he has not served either the Four Month Notice or the Two Month Notice in bad faith and is simply attempting to comply with the *Act* and regulation in exercising his rights, based on the above he has not satisfied me that he truly intends to do what he says in either of the aforementioned notices or that he does not have an ulterior motive for serving them.

As a result, I therefore find that the Two Month Notice is not valid and I order that it be cancelled. Based on the above, I also order that the tenancy continue in full force and effect until it is ended in accordance with the *Act*.

As the Tenant was successful in her Application, I also find that she is entitled to recovery of the \$100.00 filing fee pursuant to section 72 of the *Act*, which she is authorized to deduct from the next month's rent or to recover from the Landlord by way of the attached Monetary Order.

Conclusion

I order that the 10 Day Notice, the Four Month Notice and the Two Month Notice are cancelled and of no force or effect. As a result, I order that the tenancy continue in full force and effect until it is ended in accordance with the *Act*.

Pursuant to section 67 of the *Act*, I grant the Tenant a Monetary Order in the amount of \$100.00. The Tenant is provided with this Order in the above terms and the Landlord must be served with this Order as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small

Claims Division of the Provincial Court and enforced as an Order of that Court. In lieu of serving and enforcing this Order, the Tenant is authorized and entitled to deduct \$100.00 from the next month's rent.

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 20, 2018

Residential Tenancy Branch