



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDCT, LRE, OLC,

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;
- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement pursuant to section 67;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and
- an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement pursuant to section 62.

The tenant and the landlord's agent (the "landlord") 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 she was an agent of the landlord named in this application, and had authority to speak on her behalf.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. As neither party raised any issues regarding service of the application or the evidence, I find that both parties were duly served with these documents in accordance with sections 88 and 89 of the *Act*.

Preliminary Issue – Sever

Rule 2.3 of the RTB *Rules of Procedure* states that claims made in an application must be related to each other and that an Arbitrator has discretion to dismiss unrelated claims with or without leave to reapply. I advised both parties at the outset of the hearing that the central and most important issue for this hearing was whether this tenancy would end pursuant to the landlord's 2 Month Notice. Accordingly I find the remaining portion

of the tenant's application must be severed and must be dealt with separately through an application. Therefore the portion of the tenant's application seeking a monetary order, an order to suspend or set conditions on the landlord's right to enter and an order for landlord compliance is dismissed with leave to reapply.

Preliminary Issue – 2 Month Notice

At the outset of the hearing I advised the parties that because the file did not contain a copy of the 2 Month Notice I required a copy within 24 hours. The landlord agreed to fax the 2 Month Notice to the Residential Tenancy Branch. I provided a fax number and instructed the landlord to include my name and file number. To date, I have not received a copy of the 2 Month Notice.

Issue(s) to be Decided

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Background and Evidence

As per the testimony of the parties, the tenancy began approximately 13 to 14 years ago on a month-to-month basis. The landlord and her extended family occupy the upper level while the tenant rents one of two lower level units. Rent in the amount of \$674.05 is payable on the first of each month. The tenant did not remit a security deposit at the start of the tenancy. The tenant continues to reside in the rental unit.

The tenant acknowledged receipt of the landlord's 2 Month Notice on July 16, 2018. The 2 Month Notice indicates the rental unit will be occupied by the landlord or the landlord's close family member. The parties testified that the 2 Month Notice indicates an effective move-out date of September 30, 2018.

The landlord testified that although there are two lower units, the one occupied by the tenant is self-contained and therefore meets their needs over the other unit. The landlord testified that her spouse suffered a stroke in December of 2017 and since that time; her spouse has had difficulty living in their communal household. The landlord and her family discussed various options to accommodate her spouse, everything from selling the house to having extended family vacate. Ultimately the landlord and her

family determined the best solution would be to move the landlord's spouse downstairs where he could have his own space but at the same time keep the family intact.

In response, the tenant testified that it is his belief that the landlord issued the 2 Month Notice in reply to his pending lawsuit against the landlord. Further, the tenant contends the 2 Month Notice is a ploy for the landlord to collect more rent.

Analysis

Section 49 of the *Act* allows a landlord to end a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

When the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to use the rental unit for the purposes stated on the 2 Month Notice. The landlord testified that the rental unit was required for the landlord's spouse and provided two doctors' note to substantiate this claim. Although it is not unquestionable that the landlord would seek to end a tenancy in response to a pending lawsuit, I find it more probable that in this case the landlord truly sought to end the tenancy based on the needs of the landlord's spouse. The landlord's testimony was forthright and convincing and her supporting documents were congruent with her testimony.

Based on these reasons I find the landlord is entitled to end the tenancy with a 2 Month Notice. Accordingly, I dismiss the tenant's application to cancel the 2 Month Notice and uphold the landlord's 2 Month Notice.

Section 55 of the *Act* establishes that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end tenancy, an order of possession must be granted to the landlord if, the notice to end tenancy complies in form and content and the tenant's application is dismissed or the landlord's notice is upheld. Section 52 of the *Act* provides that a notice to end tenancy from a landlord must be in writing and must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

In the absence of a submitted copy of the 2 Month Notice I find I cannot definitively conclude the 2 Month Notice complies with section 52. Although I dismiss the tenant's application, I make no finding on the issuance of the order of possession as I find the landlord has not met the burden of proof in establishing entitlement to any such order.

Conclusion

The tenant's application for a monetary order, an order to suspend or set conditions on the landlord's right to enter and an order for landlord compliance is dismissed with leave to reapply.

The tenant's application to cancel the 2 Month Notice is dismissed without leave to reapply.

An order of possession is not granted to the landlord.

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 07, 2018

Residential Tenancy Branch