



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 tenants' 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 ("2 Month Notice"), pursuant to section 49; and
- 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 call witnesses, and to make submissions.

The tenants testified that they had served the landlord with their application and evidence by way of registered mail on August 17, 2018. The tenants provided a tracking number for their package. I am satisfied that the tenants had served the landlord in a manner required by section 89 of the Act, and in accordance with section 90 of the Act, I find the landlord deemed served with the tenant's application and evidence on August 22, 2018, five days after mailing.

As the tenants confirmed receipt of the 2 Month Notices dated July 1, 2018 and July 30, 2018, I find that both documents were duly served to the tenants in accordance with section 88 of the *Act*.

Preliminary Issue – Landlord's Evidence

The tenants testified in the hearing that they did not receive the landlord's evidence until 1 day before the hearing, and therefore did not have time to respond or review the evidentiary materials. The evidence was received by the RTB on September 24, 2018.

Rule 3.15 of the RTB's Rules of Procedure establishes that "the respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing"

The definition section of the Rules contains the following definition:

In the calculation of time expressed as clear days, weeks, months or years, or as "at least" or "not less than" a number of days weeks, months or years, the first and last days must be excluded.

In accordance with rule 3.15 and the definition of days, the last day for the landlord to file and serve evidence as part of their application was September 23, 2018.

This evidence was not served within the timelines prescribed by rule 3.15 of the Rules. Where late evidence is submitted, I must apply rule 3.17 of the Rules. Rule 3.17 sets out that I may admit late evidence where it does not unreasonably prejudice one party. Further, a party to a dispute resolution hearing is entitled to know the case against him/her and must have a proper opportunity to respond to that case.

In this case, I find that the tenants have testified that they not have an opportunity to review the landlord's evidentiary materials due to the landlord's failure to serve the tenants within the prescribed timelines, and accordingly I am excluding the landlord's evidence for the purposes of this hearing.

Issues to be Decided

Should the landlord's 2 Month Notices be cancelled? If not, is the landlord entitled to an Order of Possession?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This month-to-month tenancy began in December 2017, with monthly rent currently set at \$1,000.00. The landlord holds a security deposit of \$375.00, and the tenants continue to reside in the rental unit.

The landlord issued two 2 Month Notices to the tenants. One dated July 1, 2018 with an effective date of September 1, 2018, and one dated July 30, 2018 with an effective date of September 30, 2018. As neither party submitted a copy of either Notice in their

evidence, I allowed both parties to submit copies of the two 2 Month Notices after the hearing.

Both 2 Month Notices were issued for the same reason:

- 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 provided the following background for why they had decided to issue the 2 Month Notices. The landlord owns two duplexes next door to each other. The tenants reside in one of the duplexes, while the landlord currently resides in the duplex next door. The landlord plans to sell the duplex he is currently living in, and move into the tenants' unit. The landlord testified that the unit the tenants now occupy is much better than the one he is living in. The landlord's witness, TT, testified in this hearing. TT is a realtor who testified that the landlord intends to sell the duplex he is currently residing in.

The tenants testified that the landlord has made multiple attempts to end this tenancy, and this is the third hearing that the tenant has attended. The last hearing was held on August 28, 2018 where a 1 Month Notice was cancelled by the Arbitrator. A hearing was also held on March 14, 2018, adjourned to March 21, 2018 where a 10 Day Notice to End Tenancy was cancelled by the Arbitrator. The tenants testified that these repeated attempts to evict them demonstrate that the landlord did not issue the 2 Month Notices in good faith, and the landlord's true intention was to raise the rent.

Analysis

Subsection 49(3) of the *Act* sets out that a landlord may end a tenancy in respect of a rental unit where the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. The landlord testified that he intended to occupy the rental suite, and sell the duplex he is currently living in.

Residential Tenancy Policy Guideline 2: Good Faith Requirement When Ending a Tenancy states:

"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.”

Although the landlord stated that they had issued the 2 Month Notices so that he may occupy the rental unit, I find that the tenants have raised doubt as to the true intent of the landlord in issuing the 2 Month Notices. The tenants gave undisputed sworn testimony that they have received multiple notices from the landlord to end this tenancy, all of which were cancelled by an Arbitrator. As the tenants raised doubt as to the landlord's true intentions, the burden shifts to the landlord to establish that they do not have any other purpose to ending this tenancy.

Despite the fact that the landlord and his witness testified that the landlord intended to sell his duplex and move into the tenants' unit, I find that the landlord did not provide sufficient evidence to support that he would be listing his duplex for sale. Furthermore, I find the landlord's repeated attempts to end this tenancy have raised significant doubt about the landlord's true intentions to end this tenancy.

I find that the landlord has not met their burden of proof to show that they do not have any other purpose in ending this tenancy. Based on a balance of probabilities and for the reasons outlined above, I find that the landlord has not met their onus of proof to show that the landlord, in good faith, requires the tenants to vacate this specific rental unit in order for the landlord to move in.

Accordingly, I allow the tenants' application to cancel both 2 Month Notices dated July 1, 2018 and July 30, 2018. The landlord's 2 Month Notices, dated July 1, 2018 and July 30, 2018, are hereby cancelled and of no force and effect. This tenancy continues until it is ended in accordance with the Act.

I find that the tenants are entitled to recovery of the filing fee.

Conclusion

The tenants' application to cancel the landlord's 2 Month Notices is allowed. The landlord's 2 Month Notices, dated July 1, 2018 and July 30, 2018 are cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

I allow the tenants to implement a monetary award of \$100.00 for recovery of the filing fee, by reducing a future monthly rent payment by that amount. In the event that this is not a feasible way to implement this award, the tenants are provided with a Monetary Order in the amount of \$100.00, 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.

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 11, 2018

Residential Tenancy Branch