



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL DRI FFT MNSD

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 ("2 Month Notice"), pursuant to section 49;
- a determination regarding their dispute of an additional rent increase by the landlord pursuant to section 43;
- a monetary order for compensation for money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

SS ("landlord") appeared as agent for the landlord in this hearing. 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 landlord confirmed receipt of the tenant's application for dispute resolution ('application') and amendment to her application. In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenant's application and amendment. As both parties confirmed receipt of each other's evidentiary materials, I find that these documents were duly served in accordance with section 88 of the *Act*.

As the tenant confirmed receipt of the 2 Month Notice dated October 10, 2018, which was personally served to the tenant, I find that this document was duly served to the tenant in accordance with section 88 of the *Act*.

Issues to be Decided

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

Is the tenant entitled to a determination regarding their dispute of an additional rent increase by the landlord?

Is the tenant entitled to the monetary order requested?

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

Background and Evidence

This month-to-month tenancy began on July 15, 2008. Monthly rent is currently set at \$850.00, although the original monthly rent was set at \$600.00 at the beginning of the tenancy. The tenant paid a security deposit in the amount of \$300.00, which the landlord still holds.

On October 1, 2018 the landlord issued the 2 Month Notice for the following 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 he had decided to issue the 2 Month Notice. They testified that the 2 Month Notice was issued as SS is the landlord's son, and wanted to move into the basement. SS testified in the hearing that he is currently sharing a room with his sister in the home.

The tenant testified that the 2 Month Notice was not issued in good faith, and wished to have the 2 Month Notice cancelled. The tenant testified that on September 1, 2018 the landlord knocked on her door, and she was given a typed notice that the landlord wished to end the tenancy. No reason was provided on the note, but the tenant testified that the landlord had verbally informed her that "relatives from India are coming". The tenant testified that the landlord had another vacant unit in the basement available since March, but continued to serve the tenant these typed notices. The tenant informed the landlord of his obligations to issue a proper Notice to End Tenancy, and the landlord then served the tenant with the 2 Month Notice on October 10, 2018.

The tenant also filed an application for a monetary order for rent increases issued by the landlord during this tenancy. It was undisputed by both parties that the landlord had

never given formal Notices of Rent increases, but the tenant paid the increased rent as requested.

The tenant provided a detailed summary of the rent increases imposed during this tenancy.

Period	Monthly Rent
July 15, 2008 to November 1, 2009	\$600.00
December 2009- June 2010 (7 months)	625.00
July 2010 to November 2013 (41 months)	675.00
December 2013 to December 2014 (12 months)	685.00
October 2015 to October 2016 (12 months)	720.00
November 2016 to November 2017 (12 months)	775.00
December 2017 to November 2018 (11 months)	850.00

Analysis

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

Subsection 49(3) of the *Act* sets out that a landlord may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

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 Notice in order for the son to occupy the suite, I find that the tenant had raised doubt as to the true intent of the landlord in issuing this notice. She gave undisputed sworn testimony that the landlord has made multiple attempts at ending this tenancy, and although no written reason was provided to the tenant at first, she was informed that the landlord's family was arriving from India. In the hearing the landlord's son testified that he would be occupying the rental unit. The tenant also questioned the landlord's good faith as the landlord had another vacant unit available since March. As the tenant 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.

Although the landlord's son testified that he required a vacant unit to reside in himself, the landlord did not sufficiently address the tenant's concerns that another vacant unit was available, and why her particular unit was selected. Furthermore, the tenant raised considerable doubt about the landlord's true intentions as the landlord has imposed a series of rent increases in contravention of the *Act*.

I find that the landlord has not met their burden of proof to show that they issued the 2 Month Notice in good faith to occupy this particular unit. I find that the testimony of both parties during the hearing raised questions about the landlord's good faith. I find that the tenant had raised questions about why her unit was specifically targeted on multiple occasions by the landlord. The landlord did not dispute that the landlord had imposed several rent increases over the duration of this tenancy, in a manner that did not comply with the *Act*.

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 tenant to permanently vacate her rental unit.

I therefore allow the tenant's application to cancel the 2 Month Notice. The 2 Month Notice dated October 10, 2018 is hereby cancelled, and is of no force or effect. The tenancy will continue until ended in accordance with the *Act*.

Section 42 of the Act states the following about how a Notice of Rent Increase is to be given:

Timing and notice of rent increases

42 (1) A landlord must not impose a rent increase for at least 12 months after whichever of the following applies:

- (a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first established under the tenancy agreement;
- (b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with this Act.

(2) A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase.

(3) A notice of a rent increase must be in the approved form.

(4) If a landlord's notice of a rent increase does not comply with subsections (1) and (2), the notice takes effect on the earliest date that does comply.

I find that it was undisputed by the landlord that the tenant has never been issued Notice of Rent Increase in an approved form as required by section 42 (3) of the *Act*. I find that the tenant provided a detailed summary of the rent increases imposed by the landlord.

I find that the landlord has not complied with the requirements of section 42(3) of the *Act* in the issuance of any of the rent increases since the beginning of this tenancy. For this reason, I find that the rent increases imposed during this tenancy were done in contravention of the *Act*. The monthly rent for this tenancy is hereby reduced to \$600.00, the original monthly rent agreed to at the beginning of this tenancy. This monthly rent remains in effect increased in accordance with the *Act*.

Based on the above determination, I find that the tenant is entitled to a monetary award for the rent increases paid during this tenancy as set out in the table below. In the event that the tenant has already paid monthly rent for December 2018, they will also be given credit for this amount towards a future rent payment.

Period	Monthly Rent
December 2009- June 2010 (7 months * \$25)	\$175.00
July 2010 to November 2013 (41 months * \$75)	3,075.00
December 2013 to December 2014 (12 months* \$85)	1,020.00
October 2015 to October 2016 (12 months * \$120)	1,440.00
November 2016 to November 2017 (12 months * \$175)	2,100.00
December 2017 to November 2018 (11 months* \$250)	2,750.00
Total Refund	\$10,560.00

As the tenant has been successful in this application, they are also entitled to recover their \$100.00 filing fee from the landlord.

Conclusion

The tenant's application to cancel the landlord's 2 Month Notice is allowed. The landlord's 2 Month Notice, dated October 10, 2018 is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

I order that the monthly rent for this tenancy is set at \$600.00, until changed in accordance with the *Act*.

I issue a monetary award in the tenant's favour in the amount of **\$10,560.00** under the following terms:

Period	Monthly Rent
December 2009- June 2010 (7 months * \$25)	\$175.00
July 2010 to November 2013 (41 months * \$75)	3,075.00
December 2013 to December 2014 (12 months* \$85)	1,020.00
October 2015 to October 2016 (12	1,440.00

months * \$120)	
November 2016 to November 2017 (12 months * \$175)	2,100.00
December 2017 to November 2018 (11 months* \$250)	2,750.00
Total Refund of Rent	\$10,560.00

I find that the tenant is also entitled to recover the filing fee for this application.

I allow the tenant to implement a monetary award of \$600.00 for the above monetary orders by reducing a future monthly rent payment by that amount until the total monetary award is paid in full. In the event that this is not a feasible way to implement this award, the tenant is provided with a Monetary Order in the amount of \$10,660.00, 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: December 5, 2018

Residential Tenancy Branch