



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, 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 (the 2 Month Notice) pursuant to section 49;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover their 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 make submissions, to call witnesses and to cross-examine one another.

As the tenants confirmed that they were handed two separate 2 Month Notices by the landlord on October 18, 2018, I find that the tenants were duly served with these Notices in accordance with section 88 of the *Act*. As the landlord confirmed that they received a copy of the tenants' dispute resolution hearing package by mail on November 9, 2018, I find that the landlord was duly served with this package in accordance with section 89 of the *Act*. Since both parties confirmed that they had received one another's written evidence, I find that the written evidence was served in accordance with section 88 of the *Act*.

At the commencement of this hearing, I advised the parties that the primary issue raised in the tenants' application involved their request to set aside the 2 Month Notices issued to the tenants. Rule 2.3 of the Residential Tenancy Branch's (the RTB's) Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single

application. Although the tenants have included in their application a request to issue orders against the landlord for the alleged failure of the landlord to abide by the terms of their Residential Tenancy Agreement (the Agreement), the *Act* or the *Regulations*, I do not find this aspect of their application sufficiently related to their application to set aside the 2 Month Notices. For this reason, I have dismissed this portion of their application with leave to reapply.

Issues(s) to be Decided

Should the landlord's 2 Month Notice 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

In 2014, the landlord decided to move to another community for his work and after a marital breakdown. The landlord commenced renting his four bedroom home to tenants at that time. Tenant RJ moved into one of the bedrooms in this home in 2015. Tenant RS moved into another bedroom in 2016. Tenant BC (the tenant) moved into one of the bedrooms in May 2017.

The parties agreed that the monthly rent for this entire house has remained at \$1,750.00 since these tenants moved into this rental home, payable in advance on the first of each month. The landlord continues to hold a \$875.00 security deposit for these tenancies.

The landlord issued a 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) on August 30, 2018, seeking an end to this tenancy by September 30, 2018. The 1 Month Notice identified the following reasons for ending this tenancy for cause:

Tenant or a person permitted on the property by the tenant has:

- *put the landlord's property at significant risk.*

Tenant has caused extraordinary damage to the unit/site or property/park.

Tenant has not done required repairs of damage to the unit/site....

On October 16, 2018, another arbitrator appointed pursuant to the *Act* heard the tenants' application to set aside the landlord's 1 Month Notices. For the reasons outlined in that arbitrator's October 18, 2018 decision (see file number at the beginning of this decision), the arbitrator allowed the tenant's application to set aside the landlord's 1 Month Notice, allowing the tenancies to continue. The decision of the arbitrator who rendered that decision also addressed the following specific issues identified by the landlord in the 1 Month Notice in the following terms:

...In the "Details of Cause" section the Landlord indicated the tenancy was ending for the following reasons:

"Did not maintain yard and gardens, installed door in room after they were not to change anything. Failed to remove snow causing damage to staircase. Lawn mower is missing."...

On the same day that the landlord received the decision that the 1 Month Notice was set aside, the landlord issued new 2 Month Notices to the tenants on October 18, 2018, seeking an end to this tenancy by December 30, 2018, corrected to December 31, 2018 at the current hearing. The landlord's 2 Month Notices also identified a Tenant AS (see above) on the 2 Month Notice that also identified Tenant RS. The reason cited in the landlord's 2 Month Notices was:

- *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...*

In his written evidence and in sworn testimony, the landlord maintained that he was planning to move back into the rental home and no longer planned to rent out the premises to anyone.

The tenants' application for dispute questioned the landlord's good faith in issuing the 2 Month Notice. They maintained that the landlord's ongoing attempts in August 2018 to increase their rent from \$1,750.00 to \$2,700.00, an amount the landlord considered to be a proper market rent, and the timing of the landlord's 2 Month Notice, initiated immediately after having the attempt to end this tenancy for cause rejected, called into question the extent to which the landlord was acting in good faith in seeking an end to this tenancy for his own use. The tenants provided a series of emails documenting the landlord's attempts to obtain a large rent increase from them, his having solicited real estate experts to assess what would be a proper market rent, and the landlord's illegal

announcement by way of an August 6, 2018 letter that their monthly rent would be increasing to \$2,700.00 as of October 15, 2018.

In their sworn testimony, the tenant noted that the landlord's claim that he needed their premises to hold a family Christmas celebration in the traditional home of the family for the landlord's family members and a letter from the landlord's daughter did not match with the December 30, 2018 effective date by which the tenants were asked to vacate the rental unit. During the hearing, Tenant RJ testified that prior to the hearing of the tenants' application to cancel the 1 Month Notice, the landlord had talked to the tenants about his plans to turn the tenants' home into a sledding facility for clients. All of the tenants asserted that the reason the landlord was attempting to evict them by any means possible was to raise the monthly rent, allegations they supported by references to the landlord's emails and letter of August 6, 2018.

The landlord testified that he genuinely planned to move back into this home for a number of reasons. The landlord testified that his sibling(s) had been able to assist with their ageing parents who live in the community where the rental home is located. The landlord said that his mother's condition has been deteriorating and this year his sibling and spouse were travelling abroad and the landlord had agreed to move back into the tenants' home so as to take better care of this home and his parents. The landlord also mentioned that his daughter was pregnant and that returning to the family home had been planned with her as an option to spend more time with her over the holidays.

The landlord admitted to having done many things wrong in this tenancy because he did not consider himself "a landlord" and was not familiar with the provisions of the *Act* until the tenants started a series of objections to his actions. For example, in the landlord's written evidence and in his sworn testimony, the landlord maintained that he only sent the tenants the notice that their rent would be increasing to \$2,700.00, after receiving "bad advice" to try to "scare them off."

The landlord testified that he is travelling back and forth from his present residence, where he was working until August 2018 three to four times per week. The landlord testified that the return trip between his present residence and the rental property is five hours. The landlord said that he cannot continue to make these trips during the winter due to dangerous road conditions. The landlord said his changed work circumstances could enable him to work in the community where the rental home is located as a base of operations for the railway he has been on call with if he were to obtain possession of the home where the tenants have been living. In his written evidence and in his sworn

testimony, the landlord was adamant that he would never rent this home to tenants again due to the problems he had encountered with them. The landlord said that he bought the house where he is currently residing when his existing rental situation there became problematic. The landlord said that he would likely list that house for sale in the spring once landscaping of this new home has been completed.

Although the landlord prepared a written Agreement for these tenancies in late August or early September 2017 and the tenants eventually signed this Agreement, the landlord testified that his truck was broken into and the signed Agreement was part of the documents that were stolen. The parties agreed that they did sign the Agreement, which was to cover the rental period from September 23, 2017 until October 1, 2018. The landlord testified that the tenants committed to vacate the rental home by October 1, 2018 by signing the Agreement. The tenants testified that they made no such commitment and that their tenancy automatically continued as a month-to-month tenancy following the expiration of the one-year fixed term they signed in September 2017.

There was also conflicting testimony from the parties as to whether on the Labour Day Weekend in 2017, the landlord and the tenants discussed the landlord's insistence that this tenancy end by October 1, 2018 so as to enable the landlord to move back into this home.

The landlord testified that he had never intended this to become a long term rental and after inspecting the premises with his fiancée, Witness FS, on the Labour Day Weekend of 2017, he informed the tenants that this tenancy would not last past the fall of 2018 because he planned to return to this community so as to take better care of this home and be closer to his parents. Witness FS supplied a written statement, which she confirmed as accurate in her sworn testimony that she witnessed the landlord speaking to the tenant about this when the condition inspection of the premises occurred on the Labour Day Weekend in 2017. Witness FS gave sworn testimony that a male tenant let her and the landlord into the premises and that two males and a female remained in the kitchen while this quick "walk through" occurred.

The tenants gave sworn testimony that none of them had ever met Witness FS. They testified that since Witness FS did not accompany the landlord to the property to conduct an inspection on the Labour Day Weekend in 2017, she could not possibly have witnessed the conversation that she claims to have heard in which the landlord allegedly told them that their tenancy would have to end by the fall of 2018, to enable

him to move back into his home. The tenant said that the first the tenants had ever heard of any such conversation was when they received a copy of Witness FS's letter entered into written evidence in November 2018, after the landlord had issued the 2 Month Notice.

At different points in this hearing, both parties asserted that the other party/parties were being solely motivated for their actions by the amount of the current monthly rent being paid by the tenants. The landlord maintained that the sole reason that the tenants were unwilling to move was that they realized that they could not rent similar accommodations for anywhere close to the amount they were paying. For their part, the tenants claimed that the landlord's notices to end this tenancy have been issued because he was unable to convince them to pay what he considers to be a market rent for accommodations that he agreed to rent to them for \$1,750.00 per month.

Analysis

While I have turned my mind to all the documentary evidence, including photographs, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

Subsection 49(3) of the *Act* establishes 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 maintained that he needed the tenants to vacate the rental unit so that he could live there part of the time, especially in the winter months when driving would be difficult.

According to subsection 49(8) of the *Act*, a tenant may dispute a notice to end tenancy for landlord's use by making an application for dispute resolution within fifteen days after the date the tenant receives the notice. The tenants received the 2 Month Notice on October 18, 2018, and filed their Application on October 31, 2018, within the fifteen day time limit under the *Act*. The onus or burden of proof, therefore, shifts to the landlord to justify the basis for the 2 Month Notice.

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.”

As noted above, there was considerable conflicting testimony provided by the parties, particularly regarding whether the tenants had been alerted as long ago as September 2017, that the landlord would be needing the home by the fall of October 2018, as the landlord planned to move back to the community and take up residency in this home again. This conflicting sworn testimony extended beyond the substance of the discussions, which was whether or not the landlord advised the tenants at that time that the tenancy agreement that they were being asked to sign would only run until the fall of 2018, when the landlord planned to move back into these premises. The tenants testified that they had never even met the landlord's fiancée, Landlord Witness FS, nor was there any mention of her to the tenants until after the landlord issued the 2 Month Notices to them. Both the landlord and Witness FS maintained that Witness FS accompanied the landlord in a condition inspection of the home with the tenants present on the Labour Day Weekend in 2017 and heard the landlord tell them that they would have to move out by the fall of 2018, to enable him to move back into the home.

This element of the sworn testimony and written evidence is particularly troubling because it extends far beyond the parties' interpretation or recollection of events that transpired over a year prior to this hearing. There is no doubt that one or the other set of parties is being untruthful as to their account of whether the landlord was accompanied by Witness FS during the condition inspection in 2017.

When such differences in sworn testimony occur, as I should add happened frequently during this hearing, the best evidence available as to what truly transpired is the written record entered into written evidence by the parties, which chronicles the sequence of events. Such evidence does not require a finding as to the credibility of those providing conflicting sworn testimony.

As was noted above, the parties did not enter into written evidence any copy of the Agreement signed by the parties in the fall of 2017. The landlord gave undisputed sworn testimony that he believes that this Agreement was one of the items stolen when his vehicle was broken into shortly after he returned to his home. As such, there is no written proof to verify the landlord's claim that the tenants gave the landlord their written agreement that they would vacate the rental property once the one-year fixed term tenancy ended by October 1, 2018.

While I understand that the landlord may believe that his tenants are paying an unrealistically low monthly rent for what they are receiving, I note that the landlord is bound by the provisions of the *Act* with respect to increasing monthly rent. This was the amount he agreed to accept from the tenants when these tenancies began, and the landlord has not taken action to increase these rents by the amounts permitted under the *Act*.

When the fixed term ended, the tenancy automatically converted to a month-to-month tenancy. Under these circumstances, there is no need to make any finding as to who was telling the truth regarding the interaction between the parties at the condition inspection in the fall of 2017. Any such finding would be unnecessary, given that the issue before me is whether the landlord has issued the 2 Month Notice in good faith, over a year later. However, I do find that the sworn testimony regarding this interaction between the parties is helpful to the extent that it is consistent or inconsistent with the written evidence and the sequence of events that has been documented by the parties.

If the landlord and Witness FS were being truthful in their account, it strikes me that the landlord's warning that the tenancy would end to enable the landlord to move back into the home by the following fall is at odds with the landlord's subsequent actions throughout July and much of August 2018 where there is a written record of the landlord attempting to obtain a much higher monthly rent from the tenants. During all of the emails and texts exchanged between the parties over this period, there is no mention by the landlord of his intention to move back into the rental home or that he was expecting them to end their tenancy by October 1, 2018, as per the terms of their Agreement. This information from the landlord and Witness FS would also be somewhat at odds with the landlord's issuance of the 1 Month Notice in which the three reasons cited in that Notice, as well as the additional Details of Cause as noted extensively in the previous arbitrator's decision, made no mention whatsoever of any alleged breach of their Agreement or anticipated breach of their Agreement which the landlord claimed required the tenants to vacate the premises before October 1, 2018. In the previous

arbitrator's decision, heard on October 16, 2018, I find no mention of the landlord having raised concerns that the tenants had overstayed the terms of their Agreement. I also note that after the tenants remained in the rental unit past October 1, 2018, the landlord did not issue any new 1 Month Notice alleging any breach of their Agreement by overholding beyond the date when their tenancy was expected to end.

It is also possible that the tenants were truthful in their account of what transpired at the condition inspection on the Labour Day Weekend in 2017, and the landlord did not advise them that they would have to move before October 1, 2018 to allow him to move back to this home at that time. In that scenario, the tenants may very well be correct in their assertion that the first notification that they received from the landlord of his plans to move back into this home was when they received the landlord's 2 Month Notice.

As was noted earlier, the burden of proof when tenants question the extent to which the landlord is acting in good faith and not for some other ulterior motive rests with the landlord. To meet that test and to demonstrate the landlord's good faith, the landlord entered into written evidence his own letters and two other letters, both written after the 2 Month Notice was issued; one from his daughter and one from his fiancée. I have outlined above my assessment of the relevancy of the written evidence and sworn testimony of the landlord's fiancée, Witness FS, so there is no need to further expand upon that evidence.

At the hearing, the tenant raised reasonable questions as to the relevance of the letter from the landlord's daughter in that the landlord's daughter was hoping to spend Christmas with the landlord in the rental home; however, the effective date of the landlord's 2 Month Notice would not have entitled the landlord to take possession of the rental home until December 31, 2018, well after Christmas.

The landlord provided no other written documentation or witnesses at the hearing to attest to any of his sworn testimony and/or written evidence. For example, the landlord provided no evidence from a health care practitioner or social worker to confirm his claim that he needed to provide care and assistance on an ongoing basis to his ageing parents. The landlord provided nothing to confirm his claim that those who perform the tasks he will be performing for his parents this year were vacationing abroad and were unavailable to assist with their care this winter requiring the landlord to perform these tasks. The landlord provided nothing from his employer to confirm his testimony that he has not been working for that employer since August 2018, which would support his stated intention to return to the community where the rental property is located.

Similarly, the landlord produced nothing from his previous employer to confirm his potential eligibility for "on call" work in the community of the rental property should he return to reside there.

By contrast, the tenants supplied written evidence in the form of email and text message exchanges with the landlord, to document the landlord's history of attempting to obtain a sizeable monthly rent increase from \$1,750.00 to \$2,700.00, and to attempt to end their tenancy on the basis of the 1 Month Notice. The tenants provided undisputed copies of the landlord's text messages, which confirmed that the landlord had checked with representatives from a bank and with a realtor prior to July 5, 2018, to obtain an assessment of the market rent for this property. From early July until August 19, 2018, the parties were exchanging emails regarding the landlord's proposed increase in monthly rent, beyond the amount that would be allowed under the *Act* and the *Regulations* unless the tenants agreed to an increase. In an August 19, 2018 email, the tenants offered to pay the landlord an additional \$400.00 per month, which had it been accepted would have increased the monthly rent from \$1,750.00 to \$2,150.00.

The landlord may very well have been genuine in his observation at the hearing and in his written evidence that he never had any real intention of seeking a rent increase from the tenants and only tried that approach as a means of "scaring off" the tenants, and after following through on "bad advice" he received to adopt that strategy. However, by taking that approach, the landlord created a lengthy documented record of attempting to obtain more rent from the tenants as recently as August 2018, shortly before the landlord started issuing notices to end these tenancies. By following this "bad advice", I find that the landlord has provided the tenants with significant written evidence that calls into question the landlord's good faith and lends credence to the tenants' consistent allegation that the landlord has had an ulterior motive in issuing the 2 Month Notice. This written record also calls into question the landlord's claim that it had always been his intention to end these tenancies in the fall of 2018, so as to enable him to move back into the home occupied by the tenants. If that were the case, it would seem unlikely that he would have spent over a month and a half communicating with the tenants about an increase in rent which he wanted to have in place by at least mid-October 2018.

After enquiring as to his options with a representative of the RTB, the landlord chose to send the tenants a 1 Month Notice on August 30, 2018. There is no mention of any desire by the landlord to move back into the rental home or that the terms of the Agreement required the tenants to vacate the rental unit by October 1, 2018, until the

tenants were successful in having the 1 Month Notice set aside on October 18, 2018. Only when unsuccessful in obtaining the added rent he was seeking and in his effort to end this tenancy for cause did the landlord issue the 2 Month Notice, claiming that his plan had always been to move back into the rental unit in the fall of 2018.

The landlord seemed earnest in both his sworn testimony and written evidence that he has no desire to rent out this home to tenants in the future as a result of this experience. The landlord also presented as being similarly earnest in describing his need to relocate to this community to reduce the hours he spends driving back and forth from his current residence to assist his parents. However, other than his sworn testimony, he has provided very little to call into question the extensive written evidence provided by the tenants, and in particular the sequence of events that support the tenants' claim that the landlord has an ulterior motive for issuing the 2 Month Notice and may not in good faith be seeking to end this tenancy for the reasons stated in that Notice. Rather, it appears on the basis of the written evidence that the landlord obtained market rental information, tried to obtain the tenants agreement to pay a much higher monthly rent, rejected their offer to increase their rent by \$400.00 per month instead of the \$950.00 he was seeking, tried unsuccessfully to obtain an end to the tenancy for cause for specific reasons cited in his 1 Month Notice, and then and only then maintained that since September 2017 he had been planning to end these tenancies so that he could move back into this home.

Based on a balance of probabilities and for the reasons outlined above, I find that the landlord has failed to satisfy the burden of proving that he did not have an ulterior motive or motives for issuing the 2 Month Notices and that he issued them in good faith for the purpose stated in the 2 Month Notices. For these reasons, I allow the tenants application to cancel the 2 Month Notices.

In their written evidence and in their sworn testimony, the tenants indicated that they plan to end their tenancies in the late spring of 2019, when accommodations in their community become much more available and when monthly rents tend to decrease. Although I am allowing the tenants' application to set aside the landlord's 2 Month Notice, the lack of trust expressed by the parties during this hearing is at such a level that I would encourage the tenants to seriously consider following through on their current plans to end their tenancies in the late spring of 2019, giving the landlord appropriate written notice to do so, unless their tenancies have been ended for other reasons before that time.

As the tenants have been successful in their application, I allow them to recover their \$100.00 filing fee from the landlord.

Conclusion

The tenants' application to set aside the landlord's 2 Month Notices, dated October 18, 2018, are hereby set aside and of no force or effect. These tenancies continue until ended in accordance with the *Act*.

The tenants are provided with a monetary Order in the amount of \$100.00 to recover their filing fee from the landlord. The tenants are provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. The tenants may also decide to implement this \$100.00 monetary Order by deducting a future monthly rent payment by that amount. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

The tenants' application to obtain an order requiring the landlord abide by the terms of their Agreement, the *Act* or the *Regulations* is dismissed with leave to reapply.

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 07, 2018

Residential Tenancy Branch