



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, FFT

Introduction

This hearing was scheduled in response to 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;
- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenant and 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. During the hearing the tenant acknowledged that the second tenant named in his application previously lived on the same premises but in a different unit and as such he was relying on her as a witness. Accordingly, with the parties consent, I have amended the tenant's application to remove this individual as the second tenant and include her as a witness.

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*.

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?

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement?

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

Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on October 1, 2009 on a fixed term until October 1, 2010 at which time the tenancy continued on a month-to-month basis. Rent in the amount of \$797.65 is payable on the first of each month. The tenant remitted a security deposit in the amount of \$365.00 at the start of the tenancy, which the landlord still retains in trust. The tenant continues to reside in the rental unit.

The tenant acknowledged personal receipt of the landlord's 2 Month Notice dated October 26, 2018 on the same date. The 2 Month Notice indicates that the rental unit will be occupied by the landlord or the landlord's close family member. The landlord testified that her son, who currently lives in a lower unit adjacent to the tenant's rental unit, will move into the rental unit. The landlord testified that her son is sick and requires a more spacious, quieter unit with windows that open. She testified that her son previously lived in this unit and regrets having moved from it.

During the hearing, the tenant testified that he believes the unit will be occupied by the landlord's son but only to support the landlord's real motive, which is to end his tenancy due to a deteriorated relationship. The tenant's witness testified to having lived in the unit the landlord's son currently occupies. She testified that she occupied the unit from September 1, 2011 to March 31 2018 at which time she vacated pursuant to a 2 Month Notice. The witness testified that the 2 Month Notice was issued on the grounds that the landlord's son was moving in. The witness testified that prior to the 2 Month Notice her relationship with the landlord had deteriorated significantly. It was the tenant's position that the landlord was moving her son from unit to unit as a means to evict tenants she no longer wanted.

The tenant testified that he seeks an order for the landlord to comply with the *Act* to protect his right to quiet enjoyment of his rental unit.

Analysis

While I have turned my mind to all the documentary evidence, including photographs, voice recordings, and miscellaneous letters, and the testimony of the parties, not all

details of the respective submissions and / or arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

2 Month Notice

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.

The tenant questioned the good faith of the landlord suggesting the 2 Month Notice was a direct result of their deteriorated relationship and not the need to move her son. 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 must also prove they do not have an ulterior motive for ending the tenancy. The landlord testified that the rental unit was required for her son. While I have no doubt the landlord intends to move her son into the rental unit, I question the real motive behind it. As evidenced by the tenant's witness testimony, less than a year ago the landlord ended another tenancy for the same grounds.

The documentary evidence and testimony of the parties have persuaded me on the balance of probabilities that the landlord's real motive is to end a deteriorating relationship, which in this case negates the honesty of her intention to have her son move in. Accordingly, I find the landlord has failed to meet her onus and I therefore uphold the tenant's application.

Order for Quiet Enjoyment

As per section 28 of the *Act* a tenant's entitlement to quiet enjoyment include rights to reasonable privacy, freedom from unreasonable disturbance, exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit and use of common areas for reasonable and lawful purposes, free from significant interference.

Pursuant to the Residential Tenancy Policy Guideline #6 "Right to Quiet Enjoyment" a tenant's right to quiet enjoyment may be breached by frequent and ongoing interference or unreasonable disturbances. Situations in which the landlord directly caused the interference would constitute a breach.

I find the tenant has failed to meet his burden in proving the landlord breached his right to quiet enjoyment. As occupants in a shared house for a long duration of time, I find it inevitable issues will arise from time to time between the parties, particularly in relation

to noise. I find the tenant has provided insufficient evidence to establish the noise generated by the landlord residing upstairs is intentional or deliberate. Upon review of the evidence, I am satisfied that any actions taken by the landlord that the tenant has construed as an invasion of privacy or harassment are in response to issues that have arisen between the parties. Although these actions may have disturbed the tenant, I find the landlord's actions were reasonable in the circumstance and do not infringe on the tenant's right to quiet enjoyment. Accordingly, I dismiss the tenant's claim for an order for the landlord to comply with the *Act* to protect his right to quiet enjoyment of his rental unit, without leave to reapply.

As the tenant was partially successful in this application, I find that the tenant is entitled to recover \$50.00 of the \$100.00 filing fee paid for the application.

Conclusion

The tenant's application to cancel the 2 Month Notice is upheld. The tenancy continues until it is ended in accordance with the *Act*.

The tenant's application for an order for the landlord to comply with the *Act* to protect his right to quiet enjoyment of his rental unit is dismissed without leave to reapply.

The tenant is entitled to deduct \$50.00 from future rent in satisfaction of the monetary award to recover the filing fee.

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 21, 2018

Residential Tenancy Branch