



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL DRI FFT MNDCT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property pursuant to section 49;
- an order disputing an additional rent increase pursuant to section 43;
- a monetary award pursuant to section 67; and
- authorization to recover the filing fee for this application pursuant to section 72.

The landlord and the tenant both 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 tenant confirmed receipt of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property ("2 month notice"), while the landlord confirmed receipt of the tenant's application for dispute on November 23, 2018. Both parties confirmed receipt of each other's evidentiary package. All parties are found to have been duly served with all documents.

Issue(s) to be Decided

Can the tenant cancel the landlord's 2 month notice?

Is the tenant entitled to a monetary award including a return of the filing fee?

Can the tenant dispute an additional rent increase?

Background and Evidence

The tenant explained this tenancy began on June 15, 2013. Rent is \$2,600.00 per month and a security deposit of \$1,175.00 paid at the outset of the tenancy continues to be held by the landlord.

The tenant is seeking a cancellation of a 2 month notice to end tenancy for landlord's use of property issued on November 15, 2018.

The tenant questioned the good faith associated with the 2 month notice. The tenant explained the notice in question was the second 2 month notice issued to him by the landlord. The first notice given on October 26, 2018 was withdrawn by the landlord because he had failed to provide the tenant with the entire Notice to End Tenancy. The tenant said he strongly suspected that the landlord did not intend to occupy the premise himself and highlighted that the notices to end tenancy were issued following rental increases above the legislated amount and after the property had suffered from a second significant flood. Furthermore, the tenant alleged that the landlord had acknowledged in a conversation that he would not be occupying the premises. The tenant said the landlord had repeatedly emphasized to him that rent for the property was below market value and the tenant argued it "did not make sense" that the landlord would want to occupy the suite when he currently lived in a home also located in the city centre.

The landlord argued he required the space for his own personal use and said he planned to occupy the suite for "at least two years." The landlord repeated his intention to occupy the suite and said he "knew the rules" and did not intend to re-rent the suite. The landlord said his parents were the owners of the property and he explained his parents intended to take possession of the suite themselves at a later date. A review of the evidentiary packages submitted by both parties contained a series of emails between the parties. In one email dated October 26, 2018, the landlord explained to the tenant he required the use of the rental unit for his parents who were elderly, on a fixed income and had trouble navigating stairs.

In addition, the tenant applied for a monetary award of \$25,000.00 as follows:

ITEM	AMOUNT
Return of rent from May to September 2017 (5 months x \$2,600.00)	\$13,000.00
Return of rent from October to December 2018 (3 months x \$2,600.00)	7,800.00

Return of rent increase paid (18 months x \$200.00)	3,600.00
Return of rent increase paid (6 months x \$100.00)	600.00
TOAL =	\$25,000.00

The parties explained the rental unit had suffered from two significant floods which led to the landlord hiring a restoration company to address the resulting damages. The tenant argued the inconvenience caused by the presence of these restoration workers along with the resulting disruption led him to live in a “construction zone” for several months. The tenant sought a return of rent paid during the repair period. When asked to describe the scope of the work performed, the landlord explained the unit was under repair for “3 to 4 weeks” and noted the work was isolated to the guest bathroom and the hallways. The parties provided conflicting testimony as to the extent and length of repairs performed with the tenant arguing he was told by the contractor not to use the guest bathroom or shower. The landlord questioned why the tenant felt it necessary to vacate the suite during the holiday season, noting the repairs were contained to the hallway and bathroom, and did not affect the tenant’s ability to enjoy the rental unit.

In addition to a return of rent paid, the tenant sought a monetary award for rent increases that were paid starting January 2017. The tenant said he paid two separate rent increases within a twelve month period, and thus argued these payments should be found to be in contravention of the *Act*. The tenant acknowledged he had signed a written agreement authorizing the rental increases but stated he did not know his rights and was “tricked” by landlord into signing the documents.

Analysis – Notice to End Tenancy

The tenant sought a cancellation of the landlord’s 2 Month Notice for Landlord’s Use of Property. The landlord explained he intended to occupy the suite for a period of “at least two years” noting the current home he lived in was too small. The landlord said that following this time period, his parents would then move into the suite. The landlord said he had no intention to re-rent the suite.

The tenant questioned the good faith of the 2 Month Notice, highlighting that after the second period of flooding a notice to end tenancy had been issued and withdrawn. The tenant questioned why the landlord or his parents would want to occupy the suite when they owned many other properties and noted it was difficult to understand why the landlord would want to take possession of his suite when he owned a home in the city centre.

Residential Tenancy Branch Policy Guideline number #2 examines the issue of ending a tenancy for landlord's use of property. It notes that good faith is an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage. A claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End the Tenancy.

This Guideline reads in part as follows:

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 they do not have an ulterior motive for ending the tenancy.

The tenant has disputed the good faith intention of the landlord, which I find has some basis in view of the fact this is the second such notice issued in a very brief time, and follows rent increases which were done above the allowable, legislated amount. I find very little evidence was provided by the landlord to support his statement that he truly intended to occupy the rental unit in question. As noted above in *Policy Guideline #2*, "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." I find that there is sufficient doubt as to the landlord's true intentions. The landlord did not provide a timeline as to when he intended to move from the home he currently occupies, nor did he show any quotes or invoices for movers or other documentation to support such a move. The landlord provided no letters from his parents detailing their intentions to occupy the rental unit in question and I find his explanation that he was simply seeking a "bigger space" to lack sufficient detail to be convincing. Furthermore, an email dated October 26, 2018 from the landlord to the tenant explained his parents wished to occupy the unit because they were on a fixed income and had difficulty with stairs. I find the reason cited in the email by the landlord difficult to reconcile with the testimony he provided at the hearing that he intended to occupy it himself for two years and that he required a "bigger space". For these reasons, I dismiss the landlord's 2 Month Notice to End Tenancy because the landlord failed to establish he does not have an ulterior motive. This tenancy shall continue until it is ended in accordance with the *Act*.

Analysis – Monetary Award

The tenant has applied for a monetary award of \$25,000.00, a return of rent paid during repairs to the unit, along with alleged illegal rent increases. The tenant acknowledged that he agreed to the rental increases in writing but argued he was unaware of his rights and had been “tricked” by the landlord into agreeing to the increases.

Section 43(1) of the *Act* states as follows:

A landlord may impose a rent increase only up to the amount calculated in accordance with the regulations, ordered by the director on an application under subsection (3), or agreed to by the tenant in writing.

By the tenant's own admission he agreed in writing to the rental increase. I find the tenant therefore has no right under the *Act* to dispute these increases. Ignorance of the law does not relieve a party from an agreement they have entered into. I find the tenant has no recourse under the *Act* to recover funds related to increased rent.

The second portion of the tenant's monetary application concerns rent paid during repairs to the rental unit. The tenant sought a return of all rent paid during this time period, arguing he was “living in a construction zone”, noting he did not have use of a second bathroom and its shower. The landlord acknowledged repairs were required in the unit following a significant flood but disputed the length of time associated with the repairs cited by the tenant. Additionally, the landlord questioned the inconvenience described by the tenant, arguing the toilet and sink in the bathroom being fixed worked without issue and noting the repairs required were contained to the hallway.

Residential Tenancy Policy Guideline #16 states, “the purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due.” It also notes, “Damage or loss is not limited to physical property only, but also includes less tangible impacts such as the loss of access to any part of the residential property provided under a tenancy agreement.” The *Policy Guideline* goes on to note the factors that must be considered in determining whether compensation is due. They are:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and

- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

After having considered the testimony of both parties and following a review of the evidence submitted by the landlord, it is evident that some repairs were required in the suite following the flood, however, I find the amount sought by the tenant to be excessive in light of the limited inconvenience he suffered and I find no evidence that the landlord did not comply with the *Act* or that he did not take reasonable steps to ensure the unit was adequately repaired.

I find the tenant has sufficiently demonstrated that some loss occurred, but as noted above, I find the figure cited by him to be excessive. I grant the tenant an award of \$300.00 representing \$100.00 in loss for the 3 months that he was forced to live with construction in the rental unit. I find the landlord took all necessary steps to repair the unit; however, the tenant did suffer from a loss of access to a part of the residential property provided under a tenancy agreement. Furthermore, I find the evidence supplied at the hearing only provided documentation of flooding from October to December 2018, supporting the landlord's position that the guest bathroom unavailable for only "3 to 4 weeks".

As the tenant was successful in his application, he may recover the \$100.00 filing fee.

Conclusion

The tenant was successful in cancelling the landlord's 2 Month Notice to End Tenancy dated November 15, 2018. This tenancy shall continue until it is ended in accordance with the *Act*.

The tenant is granted a monetary award of \$400.00 including a return of 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: January 8, 2019

Residential Tenancy Branch