



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, FFL; MT, CNL, OLC, LRE, LAT, FFT

Introduction

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

- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 62;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for their application, pursuant to section 72.

This hearing also dealt with the tenant's cross-application pursuant to the *Act* for:

- more time to make an application to cancel the landlords' 2 Month Notice to End Tenancy for Landlord's Use of Property, dated January 14, 2019 ("2 Month Notice"), pursuant to section 66;
- cancellation of the landlords' 2 Month Notice, pursuant to section 49;
- an order requiring the landlords to comply with the *Act*, *Regulation* or tenancy agreement, pursuant to section 62;
- an order restricting the landlords' right to enter the rental unit, pursuant to section 70;
- authorization to change the locks to the rental unit, pursuant to section 70; and
- authorization to recover the filing fee for his application, pursuant to section 72.

The two landlords, female landlord ("landlord") and "male landlord" (collectively "landlords") and the tenant 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 male landlord did not testify at this hearing. The landlord confirmed that she had permission to represent the male landlord as an agent at this hearing. This hearing lasted approximately 81 minutes.

Both parties confirmed receipt of the other party's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with the other party's application.

The tenant confirmed receipt of the landlords' 2 Month Notice on January 14, 2019, which the landlord confirmed was posted to the tenant's door on that date. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlords' 2 Month Notice on January 14, 2019.

The landlord confirmed that she was not seeking her monetary application against the tenant for \$1,371.83 for the oven, dishwasher, plumbing and bylaw fine. I notified her that this application was dismissed without leave to reapply and that she would not be able to pursue this claim in the future. She confirmed her understanding of same. Therefore, the landlords are not entitled to recover the \$100.00 filing fee paid for their application, as they did not pursue it at this hearing.

The tenant confirmed that he was not seeking any other orders besides cancelling the 2 Month Notice and recovering his application filing fee of \$100.00. I notified him that the remainder of his application was dismissed without leave to reapply.

Issues to be Decided

Should the landlords' 2 Month Notice be cancelled? If not, are the landlords entitled to an Order of Possession for landlord's use of property?

Is the tenant entitled to recover the filing fee paid for his application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on April 19, 2016 for a fixed term of one year, after which it became a month-to-month tenancy. Monthly rent in the current amount of \$1,563.00 is payable on the first day of each month. A security deposit of \$725.00 was paid by the tenant and the landlords continue to retain this

deposit. Both parties signed a written tenancy agreement. The tenant continues to reside in the rental unit. The rental unit is a one-bedroom, one-bathroom apartment.

The tenant seeks to cancel the landlords' 2 Month Notice and to recover the \$100.00 filing fee paid for his application.

A copy of the landlord's 2 Month Notice was provided for this hearing. It states an effective move-out date of March 31, 2019, indicating the following reason for seeking an end to this tenancy:

- *The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).*

The landlord said that she wants to move back into the rental unit with the male landlord. She said that both landlords currently live out of country, in her husband's country, and both have been living there for the last 2.5 years. She stated that it is not her country, she has fibromyalgia and it is not warm where she is living. She said that she wants to be close to her daughter who lives here and she wants to be there for her mother who just had cataracts surgery in both eyes. She explained that she has a car here and a storage locker that she is paying \$150.00 for each month. She provided an airplane confirmation email indicating that she was flying back here on March 26, 2019. She claimed that she also booked a return ticket back out of town to her husband's home country in October 2019 but she was planning to cancel that in September 2019, since she only booked it because it was cheaper.

The landlord testified that there have been issues with the tenant during this tenancy. She said that the trust with the tenant has been broken. She stated that she had to provide proof that she did not have a storage locker at the rental building, only in-suite storage, when the tenant demanded that his rent increase include a storage locker. She claimed that the tenant expected her to fix problems right away and wanted new appliances but she was doing her best with her property manager. She maintained that she spent a lot of money on the dishwasher, oven, and plumbing, and that she had originally filed her application to get the money back for those costs. She explained that the tenant used regular dish soap instead of dishwasher soap in the dishwasher, he kept causing problems under the sink faucet after her plumber fixed the problem, and he complained about the oven not working. She stated that her property manager was tired of the tenant's aggressive behaviour and the fact that he wanted immediate assistance even though these were not emergencies. She said that the tenant tried to

“sue” her for \$4,000.00 then almost \$9,000.00 and he even complained about the pool so she had to call the strata and the property manager to deal with it.

The tenant testified that the landlords did not issue the 2 Month Notice in good faith. He said that his rent has been raised twice during this tenancy, once by \$50.00 about 14 months into his tenancy and the second time 12 months later by another \$63.00. The landlord agreed with the above information. The tenant stated that he asked the landlords to communicate with him in writing because they could not remember or follow up on their previous verbal conversations with the tenant. The tenant provided a number of emails between the landlord and the property manager, which he said were later redacted by the landlord, which ask when the landlord can end the tenant's tenancy and asking about renting to new tenants for a higher rent of \$1,800.00 per month in this rental market.

The tenant stated that the landlords have been living out of country for almost three years with no problems and they would visit here and stay with family. He claimed that the landlords only decided to issue the 2 Month Notice because the tenant filed applications at the RTB and asked for things to be fixed at the rental unit. He said that he has had to wait months for things to be fixed, including three months for the dishwasher.

Analysis

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

According to subsection 49(8) of the *Act*, a tenant may dispute a 2 Month Notice by making an application for dispute resolution within fifteen days after the date the tenant received the notice. The tenant received the 2 Month Notice on January 14, 2019, and filed his application to dispute it on January 15, 2019. The tenant's application is within the 15 day time limit under the *Act*. Therefore, the tenant does not require more time to make an application to cancel the 2 Month Notice. The onus shifts to the landlords to justify the basis of the 2 Month Notice.

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

A claim of good faith requires honesty of intention with no ulterior motive...

...

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.

I find that the landlords had a number of ulterior motives for issuing the 2 Month Notice and it was not issued in good faith for the reasons explained below.

The landlord has a number of issues with the tenant, stating that he complains too much about items that need to be fixed in the rental unit, that it has to be done immediately and he wants new appliances. The landlord filed her application to recover the costs of buying and repairing items in the rental unit. The landlord claimed that her property manager thought the tenant was too aggressive. The landlord raised the tenant's rent twice during this tenancy. The tenant provided emails from the landlord to her property manager, which were not disputed, asking if she could rent the unit to new tenants for a substantially higher rent of \$1,800.00 compared to the tenant's current rent of \$1,563.00 which started at \$1,450.00 in 2016. The landlord also inquired in these emails, when she could end the tenant's tenancy given market conditions for rent.

Based on a balance of probabilities and for the reasons outlined above, I find that the landlords have not met their burden of proof to show that they intend to move into the rental unit in good faith.

Accordingly, I allow the tenant's application to cancel the landlords' 2 Month Notice. The landlords' 2 Month Notice, dated January 14, 2019, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the Act. The landlords are not entitled to an order of possession for landlord's use of property.

I order the landlords to abide by section 29 of the *Act*, to provide the tenant with proper notice, prior to entering the tenant's rental unit. The landlord agreed to this during the hearing.

As the tenant was mainly successful in his application, I find that he is entitled to recover the \$100.00 filing fee paid for his application.

Conclusion

The tenant's application to cancel the landlords' 2 Month Notice is allowed. The landlords' 2 Month Notice, dated January 14, 2019, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*. The landlords are not entitled to an order of possession for landlord's use of property.

I order the tenant to deduct \$100.00 from a future rent payment to the landlords at the rental unit, in full satisfaction of the monetary award for the filing fee.

I order the landlords to abide by section 29 of the *Act* and provide proper notice to the tenant prior to entering the rental unit.

The landlords' application to retain the tenant's security deposit is dismissed with leave to reapply.

The remainder of both parties' applications are dismissed without 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: February 25, 2019

Residential Tenancy Branch