



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNL DRI FFT LRE PSF

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 (the "2 Month Notice") pursuant to section 49;
- an order regarding a disputed rent increase pursuant to section 43;
- authorization to recover the filing fee from the landlord pursuant to section 72;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and
- an order to the landlord to provide services or facilities required by law pursuant to section 65.

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 both parties were present service of documents was confirmed. The parties each testified that they were in receipt of the other's materials. Based on the testimonies I find that the parties were each served with the respective materials in accordance with sections 88 and 89 of the Act.

Issue(s) to be Decided

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

What order should be issued regarding the disputed rent increase?

Should the landlord's right to enter the rental unit be suspended or restricted?
Should the landlord be ordered to provide services or facilities?

Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, 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.

The parties agreed on the following facts. This periodic tenancy began in 2013. The current monthly rent is \$800.00 payable on the first of each month. The rental unit is a suite in a detached home and the landlord resides in the other portion of the building with their family. No written tenancy agreement was prepared for this tenancy.

The tenant was told by the landlord that they wished to raise the monthly rent by an additional \$400.00 for a total of \$1,200.00 in or about December, 2018. No written notice of a rent increase was issued. After the discussion the landlord informed the tenant that they would like to terminate the tenancy so that the rental unit could be used by the landlord. The landlord sent the tenant an email on February 1, 2019 purporting to be a Notice to End Tenancy. A copy of the correspondence was submitted into evidence. Subsequently, the landlord issued a 2 Month Notice on the prescribed form on March 13, 2019.

The landlord testified that the reason for the issuance of the 2 Month Notice is that the landlord's close family member, their adult son, intends to move from the landlord's suite into the rental unit. The landlord also submitted into documentary evidence photographs of the condition of the suite and claim that the tenant is hoarding and unable to maintain the suite in a reasonable state.

The tenant submits that the landlord regularly trespasses into the rental suite without their permission. The tenant submitted into evidence videos which they say show the landlord entering the rental suite.

The tenant submits that when the tenancy originally began they were permitted access to the garage to store items. Since that time the tenant says that they have been prevented access to the garage and now are unable to freely access items stored in the garage.

The tenant testified that while they have applied to recover the filing fee for their application, the filing fees were waived and no amount was paid by the tenant.

Analysis

Section 42 of the *Act* provides the timing, manner and amount by which rent can be increased by the landlord. Oral discussions and email correspondence are not acceptable manners by which a rent increase may be imposed. Based on the evidence I find that the landlord has not complied with the requirements of the *Act* in imposing a rent increase. I therefore find that the rent for this tenancy remains at the current rate of \$800.00 payable on the first until changed in accordance with the *Act*.

Section 49 of the *Act* provides that upon receipt of a notice to end tenancy for landlord's use, the tenant may, within 15 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 2 Month Notice.

In the present case the tenant filed their application to dispute the 2 Month Notice in response to the email correspondence from the landlord on February 1, 2019. The tenant filed their application on February 19, 2019. I find that the email correspondence does not meet the form and content requirements of section 52 of the *Act* regarding a proper notice to end tenancy. Therefore, while I find that the tenant was not obligated to file an application in response to the email notice, I find that the tenant filed their application within the timeframe provided under the *Act*. The 15th day from February 1, 2019 is February 16, 2019 which is a day when the Residential Tenancy Branch office is not open for business. Therefore, in accordance with the Rules of Procedure the time is extended to the next date that the office is open. In this instance the next business day is February 19, 2019.

Subsequently, the landlord corrected their error by completing and issuing to the tenant a 2 Month Notice dated March 13, 2018. While the tenant did not make a separate application or amend their original application to dispute this 2 Month Notice, I find based on the testimonies of the parties, that this 2 Month Notice is substantially the same as the email notice. I find that the tenant, in filing their application disputing the landlord's notice to end tenancy, has sufficiently responded to this 2 Month Notice.

When a tenant applies to dispute a notice to end tenancy the onus is on the landlord to show on a balance of probabilities the grounds for the notice. In the present case the landlord testified that they intend for their adult son to occupy the rental suite.

However, the landlord's documentary evidence pertains to the condition of the suite and the landlord's concern about the tenant's accumulation of materials. Furthermore, the correspondence between the parties shows the landlord attempted to impose a rent increase immediately prior to issuing the notice to end tenancy.

Residential Tenancy Branch Policy Guideline number 2 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.

Based on the evidence before me I do not find that the landlord's reason for seeking to end this tenancy is primarily motivated to allow a family member to reside in the unit.

I find on the balance of probabilities that the intention and motivation of the landlord is to end this tenancy, and any future occupancy of the rental unit is a secondary concern. Therefore, the 2 Month Notice is cancelled. The tenancy will continue until it is ended in accordance with the Act.

I find that there is insufficient evidence in support of the balance of the tenant's claim. I find that the videos submitted by the tenant do not show that the landlord has entered the rental unit without the tenant's authorization. The images submitted show little details. While there are some individuals seen moving in the background I do not find that it is sufficient to establish that the landlord has entered the rental unit such that an order restricting their rights is necessary. While I remind both parties that the terms of the Act pertaining to a landlord's right to enter the rental suite remains in effect, I decline to issue an order restricting the landlord's right to access the rental suite.

In the absence of a written tenancy agreement setting out what amenities are included in the tenancy I find that there is insufficient evidence that the tenant is entitled to use of the garage for storage. The parties gave conflicting testimonies about what areas of the rental building the tenant is allowed to access. I do not find the fact that the tenant was allowed to use the garage in the past to be conclusive. Simply because the landlord allowed some past incursions does not necessitate that the use of the garage is an included element of the tenancy. I find that the tenant has not met their evidentiary burden on a balance of probabilities to show that access to the garage is a service or facility included in the tenancy agreement. Consequently, I dismiss this portion of the tenant's application.

While the tenant was partially successful in their application, as they did not pay any filing fees they are not entitled to a monetary award.

Conclusion

The tenant's application to cancel the notice of rent increase and 2 Month Notice are allowed.

The 2 Month Notice is cancelled and of no further force or effect. This tenancy continues until ended in accordance with the Act. The monthly rent remains at the present amount of \$800.00 until changed in accordance with the Act.

The balance of the tenant's application is 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: April 4, 2019

Residential Tenancy Branch