



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL OLC RP FFT

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 of Property ("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;
- an order to the landlord to make repairs to the rental unit pursuant to section 33; and
- authorization to recover the 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 call witnesses, and to make submissions.

The landlord confirmed receipt of the tenant's application for dispute resolution ('application'). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenant's application. As both parties confirmed receipt of each other's evidentiary materials, I find that these documents were duly served in accordance with section 88 of the *Act*.

As the tenant confirmed receipt of the 2 Month Notice on June 19, 2019, I find that this document was duly served to the tenant in accordance with section 88 of the *Act*.

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?

Is the tenant entitled to an order for the landlord to comply with the *Act*?

Is the tenant entitled to an order requiring the landlord to make repairs to the rental unit?

Is the tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on March 1, 2018, with monthly rent set at \$1,200.00, payable on the first of the month. The tenant still resides in the home.

The landlord issued the 2 Month Notice dated June 19, 2019, with an effective move-out date of August 31, 2019 for the following reason:

- 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.

The landlord provided the following background for why they had decided to issue the 2 Month Notice. The named landlord in this application is employed by the owners of the home. The landlord was instructed by the owners to issue the 2 Month Notice as the eldest daughter of the owner, who is due with her second child on September 26, 2019, intends to move into the home in order to be closer to her parents. This daughter currently lives in another city, and the landlord testified in the hearing that the cost of living is much lower in this city than the one she is currently residing in. The landlord included an affidavit from the daughter confirming that she will be moving into the home.

The tenant is disputing the 2 Month Notice as she does not believe that the landlord issued the 2 Month Notice in good faith. The tenant testified that the landlord has made several unsuccessful attempts at ending this tenancy. The tenant provided, in her evidence package, the decisions from three previous RTB hearings between herself and the owners of the property.

The first hearing was scheduled for September 11, 2018 in order to deal with the tenant's application to cancel a 2 Month Notice to End Tenancy issued to her on August 7, 2018. The landlord had issued the 2 Month Notice stating that the daughter of the owner and her husband would be moving into the home. The daughter, referred to in this hearing, resides in the same city as the tenant. The tenant also applied for emergency repairs to be completed. The Arbitrator, in the decision dated September 12, 2018, cancelled the 2 Month Notice stating that she was "persuaded by the evidence before me that his true intention is to have his daughter and son and law reside in the rental unit as claimed on the Notice, rather, I find that he issued the Notice to avoid making the required repairs".

In her decision, the Arbitrator also made the following orders regarding repairs to the home, which the tenant testified has yet to be done by the landlord.

"I am satisfied the Landlord has attended to some of the repairs, however it is clear some remain to be completed. I therefore grant the Tenant's request for an Order that the Landlord make such repairs.

In furtherance of the above I Order as follows:

1. By no later than September 26, 2018 the Landlord shall:

- (a) Hire a qualified electrician to inspect the electrical in the rental unit and provide to the Tenant, within 7 days of receipt of same, a written opinion as to the reason for the power outages.*
- (b) Hire a qualified electrician to repair the exterior motion sensor, driveway soffit lighting and front porch light.*
- (c) Provide to the Tenant a copy of the invoice from the drain specialists who serviced the drains in July of 2018 and provide to the Tenant any recommendations received from the drain specialists relating to the rental property.*
- (d) Should the drain specialists recommend a course of action which has not been undertaken by the Landlord the Tenant is at liberty to make a further application for an Order that the Landlord make such repairs.*
- (e) Hire a qualified plumber to repair the hole in the bathtub and the toilet."*

Another hearing was held on December 17, 2018 to deal with the tenant's application for a rent reduction, as well as an application to cancel a 10 Day Notice for Unpaid Rent. The Arbitrator cancelled the 10 Day Notice, and granted the tenant's application for a rent reduction for the landlord's failure to complete the repairs as ordered in the previous decision dated September 12, 2018.

The Arbitrator made the following order on December 17, 2018:

"In accordance with sections 65(1)(f) and 67 of the Act, I find that there is a loss in the value of the tenancy due to the landlord's failure to comply with the repair order issued in the previous hearing. I find that the monetary amount of the loss of value in the rent is \$300.00, a quarter of the monthly rent under the tenancy agreement. Accordingly, I order that the monthly rent for this tenancy is reduced by \$300.00 to \$900.00 until such time as the landlord has completed the repairs ordered in the decision of September 12, 2018.

*On each successive month where repairs have not been completed, the tenant is authorized to reduce the monthly rent by a further \$50.00 until such time as the repairs are completed. I order that the tenant's rent will return to the normal monthly amount required by the tenancy agreement and the Act in the month following the completion of these repairs. **By way of example** and so as to ensure that there is clarity regarding the implementation of my decision, **should the landlord not complete repairs until mid- May 2019**, my order would lead to the following monthly rent payments from January 1, 2019 until June 1, 2019 for this tenancy:*

Month	Monthly Rent
January 2019	\$900.00 (\$1,200.00 - \$300.00 = \$900.00)
February 2019	\$850.00 (\$1,200.00 - \$350.00 = \$850.00)
March 2019	\$800.00 (\$1,200.00 - \$400.00 = \$800.00)
April 2019	\$750.00 (\$1,200.00 - \$450.00 = \$750.00)
May 2019	\$700.00 (\$1,200.00 - \$500.00 = \$700.00)
June 2019	\$1,200.00

Should a dispute arise as to the extent to which the repairs ordered by the previous arbitrator have been completed, I order that the rent remain at the previous month's reduced rent until such time as the landlord has applied for and obtained an order from an arbitrator appointed under the Act as to whether the repairs have been completed in

accordance with the previous arbitrator's decision. The landlord is at liberty to apply for a determination as to the landlord's compliance with the previous arbitrator's decision once the landlord has undertaken the repairs ordered by the previous arbitrator."

On May 28, 2019 another hearing was held to with the tenant's application for cancellation of a 4 Month Notice issued by the landlord. The landlord had issued the 4 Month Notice dated March 8, 2019, indicating the following reason:

"To perform renovations or repairs that are so extensive that the rental unit must be vacant".

The landlord had testified that the 4 Month Notice was issued in order for the eldest to move into the home, and the Arbitrator dismissed the 4 Month Notice stating "while the Landlord may have sufficient cause to end the tenancy, I find that in this case, the Landlord has served the improper notice for that purpose."

The tenant testified in the hearing that she has been residing in a home that requires extensive repairs, which the landlord has not done despite orders from an Arbitrator to do so. The tenant feels that the landlord had issued this 2 Month Notice as a means of ending this tenancy in an effort to evade the landlord's responsibility to perform the required repairs.

The tenant made another application for the repairs to be done to the home as the landlord has disregarded the previous orders made. The landlord responded in the hearing that an attempt was made to perform an inspection, but when he had attended the home, the tenant was quite aggressive and had denied him the ability to perform the inspection. The tenant disputes this stating that it was the landlord who was aggressive, and unprofessional. The tenant believes that the landlord was hired by the owners as a tactic to end this tenancy. The tenant expressed concern that the landlord is not a licensed inspector, and was simply there to harass her.

The landlord testified in the hearing that as a landlord he had the right to perform inspections as allowed under the *Act*.

Analysis

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

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.”

Although the landlord stated that they had issued the 2 Month Notice in order for the eldest daughter to move in, I find that the tenant had raised doubt as to the true intent of the landlord in issuing the 2 Month Notice. The burden, therefore, shifts to the landlord to establish that they do not have any other purpose to ending this tenancy.

The undisputed history between the two parties includes 3 previous, unsuccessful attempts to end this tenancy by the landlord within a period of less than one year. In consideration of the evidence before me, what I find to be especially aggravating and troubling is the fact that the landlord has not complied with the Arbitrator’s orders for repairs since the decision was issued on September 12, 2018, even after another Arbitrator granted the tenant’s application for a rent reduction on December 17, 2018. I find that the landlord’s blatant disregard for the Arbitrator’s repair orders to be sufficient reason to believe that the landlord has an ulterior motive for ending this tenancy.

I find that the landlord has not met their burden of proof to show that the 2 Month Notice was issued in good faith. I find that the testimony of both parties during the hearing as well as the evidence presented raised questions about the landlord’s good faith, and the sworn affidavit does not sufficiently satisfy me that the true reason for ending this tenancy is for the eldest daughter to move in.

Accordingly, I allow the tenant's application to cancel the 2 Month Notice. The landlord's 2 Month Notice, dated June 19, 2019, is hereby cancelled and is of no force and effect. This tenancy is to continue until it is ended in accordance with the *Act*.

The tenant also applied for an order for the landlord to comply with the *Act*, and to perform repairs. As a previous order was already made by an Arbitrator for the landlord to perform repairs, I dismiss the tenant's application for another order. However, I remind the landlord of their obligations under section 32 of the *Act* as stated below:

Landlord and tenant obligations to repair and maintain

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

I also remind the landlord of their obligation under section 28 of the *Act* as stated below:

Protection of tenant's right to quiet enjoyment

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following...

(b) freedom from unreasonable disturbance;...

(d) use of common areas for reasonable and lawful purposes, free from significant interference.

The tenant is at liberty to apply for a further rent reduction under section 65 of the *Act* if the landlord fails to comply with the *Act* or tenancy agreement.

I allow the tenant to recover the filing fee for this application.

Conclusion

The tenant's application to cancel the landlord's 2 Month Notice is allowed. The Landlord's 2 Month Notice, dated June 19, 2019, is cancelled and is of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

I issue a \$100.00 Monetary Order in favour of the tenant for recovery of the filing fee. I allow the tenant to implement the above monetary award by reducing future monthly rent payments until the amount is recovered in full. In the event that this is not a feasible way to implement this award, the tenant is provided with a Monetary Order in the amount of \$100.00, and the landlord(s) must be served with **this Order** as soon as possible.

The remainder of the tenant's application 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: August 21, 2019

Residential Tenancy Branch