



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL CNR FFT MNDCT OLC PSF

Introduction

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

- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- cancellation of the landlord's 10 Day Notices to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice"), pursuant to section 49; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

While the tenant's agent attended the hearing by way of conference call, the landlord did not. I waited until 11:27 a.m. to enable the landlord to participate in this scheduled hearing for 11:00 a.m. The tenant's agent was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the tenant and I were the only ones who had called into this teleconference.

The tenant's agent provided sworn, undisputed testimony that the landlord was served with this application for dispute resolution hearing package ("Application"), all amendments, and evidence by way of registered mail. In accordance with sections 88, 89, and 90 of the *Act*, I find that the landlord was deemed served with the Application, amendments, and evidence.

As the tenant confirmed receipt of the 2 Month Notice on June 27, 2019, the 10 Day Notice on August 5, 2019, and the 10 Day Notice on September 3, 2019, each of which were posted on her door or in her mail box I find that these documents were deemed served to the tenant in accordance with sections 88 and 90 of the *Act*.

Preliminary Issue- Severance

Residential Tenancy Branch (RTB) Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claims regarding the Two Month Notice and the Two, 10 Day Notices, the tenant's access to her mail, and the continuation of this tenancy are not sufficiently related to any of the tenant's other claims to warrant that they be heard together. The parties were given a priority hearing date in order to address the question of the validity of the Notices to End Tenancy.

The tenant's other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the Notices to End Tenancy. I exercise my discretion to dismiss all of the tenant's claims with leave to reapply except cancellation of the notices to end tenancy, the tenant's access to her mail, and recovery of the filing fee for this application.

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?

Should the landlord's 10 Day Notices be cancelled?
If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to an order to the landlord to provide services or facilities required by law?

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 August 15, 2016, with monthly rent set at \$922.50, payable on the first of the month. The tenant still resides in the home.

The landlord issued the 2 Month Notice dated June 27, 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 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 at least one unsuccessful attempt at ending this tenancy by way of a 2 Month Notice. On February 28, 2019 the landlord had served her with a 2 Month Notice for landlord's use, with an effective date of April 30, 2019. The 2 Month Notice was cancelled after a hearing was held on May 7, 2019 when both parties had mutually agreed that the 2 Month Notice would be cancelled, and the tenancy would continue on a month-to-month basis until ended in accordance with the *Act*. On June 27, 2019, the landlord issued the tenant another 2 Month Notice for landlord's use.

The tenant was issued a 10 Day Notice for Unpaid Rent on August 5, 2019 as well as September 3, 2019. The tenant admits that she had withheld rent for August 2019 as she was under the understanding that she was entitled to a month's free rent as stated on the 2 Month Notice served to her on June 27, 2019.

The tenant was issued another 10 Day Notice on September 3, 2019 for unpaid rent. The tenant testified that the September 2019 rent was paid a few days later, on September 8, 2019.

The tenant is making an urgent request for access to the community mail box. The tenant testified that although the other tenant and landlord had access to the mailbox with a key, she did not. The tenant submitted that she had to rely on the other parties to forward her mail to her, which was problematic given the history between herself and

the landlord. The tenant expressed concern that this was the only means of service of documentation to her from the landlord, such and notices to end tenancy. The tenant is requesting that the landlord provide her with her own key so that she would not have to rely on having the landlord or another party to forward her mail.

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.”

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 one previous attempt to end this tenancy by way of a 2 Month Notice only a few months prior to the issuance of this second 2 Month Notice. In consideration of the evidence before me, and the lack of submissions from the landlord regarding this 2 Month Notice, I find that the landlord has not met their burden of proof to show that the 2 Month Notice was issued in good faith.

Accordingly, I allow the tenant’s application to cancel the 2 Month Notice. The landlord’s 2 Month Notice, dated June 27, 2019, is hereby cancelled and is of no force and effect.

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for unpaid rent the tenant may, within five days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch or pay the overdue rent. I find that the tenant had paid the September 2019 rent within five days of receiving the 10 Day Notice on September 3, 2019 in accordance with section 46(4) of the *Act*. Accordingly, the 10 Day Notice dated September 3, 2019 is of no effect. Accordingly, the 10 Day Notice dated September 3, 2019 is cancelled.

The tenant filed an application to dispute the 10 Day Notice dated August 5, 2019. The 10 Day Notice was posted on her door on August 5, 2019, and in accordance with sections 88 and 90 of the *Act*, the tenant is deemed served with the Notice 3 days later, on August 8, 2019. The tenant filed an amendment to her application on August 12, 2019 to dispute this 10 Day Notice, 4 days later. As the tenant filed her application within the required timeline under section 46 of the *Act*, I will consider whether the 10 Day Notice is valid.

The tenant's testimony is that she was served with a 2 Month Notice on June 27, 2019 that stated that she was entitled to a month's rent in compensation for the 2 Month Notice from the landlord. I am satisfied with the tenant's explanation for why she had withheld the August 2019 rent, and accordingly I allow the tenant's application to cancel the 10 Day Notice dated August 5, 2019.

The 2 10 Day Notices are of no force or effect, and this tenancy is to continue until ended in accordance with the *Act*.

The tenant applied for a set of keys to access her mail. RTB Policy Guideline #1 states the following about a tenant's right to a set of her own keys:

KEYS

The landlord must give each tenant at least one set of keys for the rental unit, main doors, mail box and any other common areas under the landlord's control, such as recreational or laundry rooms. The tenant must return all keys at the end of the tenancy, including those he or she had cut at his or her own expense.

I order that the landlord comply with the above policy guideline by providing the tenant with her own set of keys to access her mail.

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 and 2 10 Day Notices are allowed. The Landlord's 2 Month Notice dated June 27, 2019, the landlord's 10 Day Notice dated August 5, 2019, and the 10 Day Notice dated September 3, 2019 are 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.

I order that the landlord comply with RTB Policy Guideline #1 by providing the tenant with her own set of keys to access her mail.

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: September 17, 2019

Residential Tenancy Branch