



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, PSF, 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 (the 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 provide services or facilities required by law pursuant to section 65; 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 make submissions, to call witnesses and to cross-examine one another.

As the tenant confirmed that he was handed the 2 Month Notice by the landlord on July 9, 2019, I find that the tenant was duly served with this Notice in accordance with section 88 of the *Act*. As the landlord confirmed that they received a copy of the tenant's dispute resolution hearing package sent by the tenant by registered mail on July 27, 2019, I find that the landlord was duly served with this package in accordance with section 89 of the *Act*. Since both parties confirmed that they had received one another's written evidence, I find that the written evidence was served 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? Should any other orders be issued with respect to this tenancy? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

This tenancy for a dwelling on this acreage property where the landlord and their husband reside commenced in May 2007. When this tenancy first began, the tenant testified that the monthly rent was set at \$750.00, payable in advance on the first of each month. The parties agreed that the current monthly rent is set at \$800.00. The landlord continues to hold the tenant's \$375.00 security deposit paid when this tenancy began.

The parties entered into written evidence a copy of the 2 Month Notice, which sought an end to this tenancy by September 30, 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...*

At that time, the landlord's plan was to move from their existing residence on this property to the tenant's current rental unit, and rent out the landlord's existing residence to new tenants.

The tenant's application questioned whether the landlord truly intended to move into this rental unit, and sought more time to vacate the rental unit. The tenant also sought the issuance of a number of orders against the landlord, including orders with respect to receipts for cash payments, the removal of an awning at the end of the tenancy, the condition of the yard, and security cameras which the tenant maintained violated their right to privacy and quiet enjoyment of the property.

Subsequent to issuing the 2 Month Notice, the landlord learned that their property did not permit a second household from residing there. A municipal bylaw official sent the landlord a letter on August 13, 2019, giving the landlord until September 30, 2019 to comply with municipal bylaws and cease using the second dwelling as a separate residence. Since this prevented the landlord from going forward with their plans to relocate to the tenant's rental unit and rent out the other larger residence where the landlord and their spouse have been residing, the landlord issued a 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) on August 30, 2019. The 1 Month Notice also identified September 30, 2019 as the effective date whereby this tenancy would end. As that Notice was left in the tenant's mail slot on August 30, and was not received by the tenant until September 2, 2019, the corrected effective date of the 1 Month Notice would be October 31, 2019.

The tenant testified that they had applied to cancel the 1 Month Notice, issued on the basis that the landlord had received an order requiring the landlord to discontinue using a second residence on this property. The parties agreed that the tenant's application to cancel the 1 Month Notice is scheduled to be heard by an Arbitrator appointed pursuant to the Act on October 31, 2019 (see above file number).

Both parties recognized that circumstances have changed following the issuance of the landlord's 2 Month Notice that have prevented the landlord from using the tenant's rental unit for the purposes stated in that Notice. Both parties expressed an interest in having the landlord's more recent reason for ending this tenancy pursuant to the landlord's more recently issued 1 Month Notice considered at the October 31, 2019 hearing.

Although there was some discussion between the parties as to whether there was a need to issue any of the orders identified in the tenant's current application, the tenant advised that there was no need to proceed with those portions of their application at this time as whether or not the tenancy will continue will be considered at the upcoming hearing.

Analysis

Pursuant to section 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. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the 2 Month Notice. As the tenant submitted their application to cancel the 2 Month Notice on July 22, 2019, they were within the time limit for doing so, and the landlord must demonstrate that they meet the requirements of the provisions of section 49(3) of the *Act* to end this tenancy:

In this case, the landlord's intention to move into the tenant's rental unit and rent out the landlord's residence where they have been living is no longer possible. This is because of the information obtained from the municipal bylaw office requiring the landlord to cease using the second residence as a separate dwelling by September 30, 2019. The landlord's issuance of the second notice to end this tenancy for cause recognizes that these circumstances have changed since the landlord issued the 2 Month Notice currently before me.

As there is undisputed sworn testimony and written evidence that the landlord cannot implement their plans that led to the issuance of the 2 Month Notice, I allow the tenant's application to cancel the 2 Month Notice.

Since the tenant's application has been successful, I allow the tenant's application to recover the \$100.00 filing fee from the landlord.

I dismiss the remainder of the tenant's application with leave to reapply, pending the outcome of the October 31, 2019 hearing.

Conclusion

The tenant's application to cancel the 2 Month Notice is allowed, with the effect that the 2 Month Notice is set aside and is of no continuing force or effect. This tenancy continues until ended in accordance with the *Act*.

I issue a monetary Order in the amount of \$100.00, which allows the tenant to recover their filing fee for this application. The tenant is provided with these Orders in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court. As this tenancy is continuing, the tenant may also choose to withhold \$100.00 from an upcoming monthly rent payment.

The remainder of the tenant's application is dismissed with leave to reapply, pending the outcome of the October 31, 2019 hearing.

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 20, 2019

Residential Tenancy Branch