



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL DRI FFT RP

Introduction

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

- cancellation of the landlords' 2 Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice"), pursuant to section 49;
- a determination regarding their dispute of an additional rent increase by the landlords pursuant to section 43;
- an order to the landlords to make repairs to the rental unit pursuant to section 33; and
- authorization to recover the filing fee for this application from the landlords, pursuant to section 72.

HT ("landlords") appeared for the landlords in this hearing. 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 landlords confirmed receipt of the tenant's application for dispute resolution ('application'). In accordance with section 89 of the *Act*, I find that the landlords were 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 dated July 10, 2019, I find that this document was duly served to the tenant in accordance with section 88 of the *Act*.

At the beginning of the hearing the landlords confirmed that no Notices of Rent Increases have been issued to the tenant. On this basis, the tenant's application to

dispute the landlord's notice of rent increase is cancelled as no rent increase has been imposed up to the time of the hearing.

Issues 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 requiring the landlord to make repairs to the rental unit?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

This month-to-month tenancy began on August 15, 2018. Monthly rent is currently set at \$1,000.00, payable on the first of every month. The tenant paid a security deposit in the amount of \$500.00, which the landlords still hold.

On July 10, 2019 the landlords issued the 2 Month Notice 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 landlords provided the following background for why he had decided to issue the 2 Month Notice. GT, who is the father of the landlord HT, wishes to move back to the home. GT wants to move back to home after recovering from some health issues, and included in the landlords evidentiary materials are several letters, including a letter from GT confirming this. GT is in his 90s, and wants to be close to the community resources he requires such as the medical clinic and legion. The landlords' testimony is that GT still has his furniture and chairlift in the home, which he would like use of. The landlord testified in the hearing that the legion he belongs to will provide support for GT as GT qualifies for a special program to support his independence.

The tenant testified that the 2 Month Notice was not issued in good faith. The tenant testified that the 2 Month Notice was only issued after the landlords had unsuccessfully attempted to impose an illegal rent increase, and after she had requested repairs to the home.

The tenant testified that on June 9, 2019 she had received an email from the landlords informing her that the rent would increase. The tenant included a copy of the email in

her evidentiary materials which reads: *“Hi R, I hope all is well. This is to let you know that after August 15 the rent will increase to \$1500. R will clean up the wood debris sometime in July. Dad looked at the expenses and he has suggested this as a fair rent”*. The tenant responded to the landlords on July 6, 2019 informing the landlords that this was not a legal rent increase. The tenant was served the 2 Month Notice on July 10, 2019, a few days later. The landlords responded that no formal rent increases have been issued, or implemented.

On July 6, 2019 the tenant also made a request for repairs. The landlords testified that they did not receive this request until after the 2 Month Notice was issued.

The tenant wants an order for the landlords to comply with the *Act* and perform the requested repairs, which included replacement of the old refrigerator, replacement of at least a portion of the carpet, and provision of a lawnmower.

Analysis

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.

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 landlords stated that they had issued the 2 Month Notice in order for the landlord's father to move back to the home, I find that the tenant had raised doubt as to the true intent of the landlords in issuing this notice. I find that although the landlords had never formally issued a Notice of Rent Increase, the tenant provided documentary evidence to support that the landlords had sent an email to the tenants of their desire to increase the rent. The tenant also submitted a copy of their reply to the landlords informing the landlords of their obligations under the *Act*. The tenant also made a request for repairs, which the landlords dispute receiving until after the 2 Month Notice was issued. The landlords issued the 2 Month Notice only a few days after the tenant's response about the rent increase. As the tenant raised doubt as to the landlords' true intentions, the burden shifts to the landlords to establish that they do not have any other purpose to ending this tenancy.

In consideration of the evidence before me I find that the tenant raised considerable doubt about the landlords' true intentions. Although no formal rent increase was imposed, this does not change the fact that there was communication between the parties about the landlords' desire to increase the rent. I find that the 2 Month Notice was issued shortly after the tenant's response to the landlords informing them that the rent increase is not compliant with the *Act*.

I find that the landlord has not met their burden of proof to show that they issued the 2 Month Notice in good faith. I find that the testimony of both parties during the hearing raised questions about the landlords' ulterior motives in ending this tenancy.

I find that the landlords have not met their burden of proof to show that they do not have any other purpose in ending this tenancy. Based on a balance of probabilities and for the reasons outlined above, I find that the landlords have not met their onus of proof to show that the landlords, in good faith, are ending this tenancy for no other reason than for GT to occupy the home.

I therefore allow the tenant's application to cancel the 2 Month Notice. The 2 Month Notice dated July 10, 2019 is hereby cancelled, and is of no force or effect. The tenancy will continue until ended in accordance with the *Act*.

Section 32 of the *Act* states the following:

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.

(5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

I am not satisfied that the tenant had provided sufficient evidence to show that the landlords have failed to comply with section 32 of the *Act*. Accordingly, this portion of the tenant's application is dismissed with leave to reapply.

I find the tenant is entitled to recover their \$100.00 filing fee from the landlord.

Conclusion

The tenant's application to cancel the landlord's 2 Month Notice is allowed. The landlords' 2 Month Notice, dated July 10, 2019 is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

I find that the tenant is also entitled to recover the filing fee for this application.

I allow the tenant to implement a monetary award of \$100.00 for the above monetary orders by reducing a future monthly rent payment by that amount until the total monetary award is paid 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 landlords must be served with **this Order** as soon as possible. Should the landlords

fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

I dismiss the tenant's application for repairs 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 27, 2019

Residential Tenancy Branch