



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, 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; 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 they received the 2 Month Notice from the landlord on August 16, 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 and written evidence package on or about August 28, 2019, I find that the landlord was duly served with this package in accordance with section 89 of the *Act*. Since the landlord did not provide copies of their written evidence to the tenant, I advised the parties at the hearing that I would not be considering the landlord's written evidence in making my decision.

At the hearing, the tenant also said that the landlord had issued a subsequent handwritten Notice to End Tenancy on or about September 30, 2019.

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

Background and Evidence

The parties agreed that this tenancy began on May 30, 2019, on the basis of a Residential Tenancy Agreement (the Agreement) written in the Cantonese language. The tenant maintained that this is a one-year fixed term; the landlord maintained that this is a month-to-month tenancy. As neither party provided a translated copy of the Agreement, this difference in sworn testimony would need to be addressed at a later time if the term of the Agreement becomes contentious.

The parties agreed that the tenant shares space with another tenant in the lower level of the landlord's home. The tenant and landlord do not share kitchen or bathroom facilities. Monthly rent is set at \$900.00, payable in advance by the 30th of each month. The landlord retains the tenant's \$450.00 security deposit paid when this tenancy began. The tenant has paid rent for the month of October 2019.

The parties agreed that the 2 Month Notice and the subsequent notice issued by the landlord seeking an end to this tenancy by November 30, 2019 was handwritten by the landlord in Cantonese.

In addition to requesting that these Notices to End Tenancy be cancelled, the tenant maintained that the landlord has entered the tenant's rental unit a number of times without the tenant's permission. The tenant also asked for the issuance of orders against the landlord for imposing or attempting to impose conditions upon the tenant's use of the rental unit. Some of the following conditions were included in the Agreement; others were not. These conditions included the following:

- restrictions on the tenant's use of the telephone in the living room of the rental unit;
- restrictions on guests that the tenant is allowed to bring to the rental unit;
- restrictions on guests entering the rental unit after 8:00 p.m.;
- restrictions on having guests stay overnight in the rental unit;
- requirement that the tenant close windows; and
- restrictions on when the tenant could cook and use the kitchen in the rental unit.

At the hearing, the landlord did not dispute the tenant's list of conditions the landlord had placed on the tenant's use of the rental unit. The landlord did dispute whether they had ever entered the rental unit illegally. The landlord testified that they had only entered when there was what appeared to be an emergency situation that could have damaged the landlord's home.

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 August 16, 2019, they were within the time limit for doing so, and the landlord must demonstrate that they meet the requirements of section 49(3) of the *Act* to end this tenancy. Section 49(7) of the *Act* requires that “a notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.”

Handwritten notices and notices issued in languages other than English do not comply with the requirements of section 52. In this situation, the landlord has failed to use the approved Residential Tenancy Branch (RTB) form for both the 2 Month Notice and any other Notice to End Tenancy issued to the tenant. For this reason, I allow the tenant's application to cancel the 2 Month Notice. The subsequent Notice is also invalid.

Section 29 of the *Act* reads in part as follows:

29 (1) *A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:*

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;...

(d) the landlord has an order of the director authorizing the entry;...

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1)

(b)...

Although I am making no finding with respect to whether the landlord has actually contravened section 29 of the *Act*, I believe that the landlord may very well require a reminder that the landlord is required to abide by the provisions of section 29 of the *Act*. For this reason, I order the landlord to provide at least 24 hours written notice to the tenant to enter the tenant's rental unit in accordance with section 29 of the *Act*. If the landlord has reason to believe that there is a true emergency, the landlord is still able to enter the rental unit without providing such notice to the tenant. The landlord is also allowed to access the other tenant's rental unit, with proper provision of notice to that tenant or with that tenant's authorization.

Section 5 of the *Act* reads as follows:

This Act cannot be avoided

5 (1)*Landlords and tenants may not avoid or contract out of this Act or the regulations.*

(2)*Any attempt to avoid or contract out of this Act or the regulations is of no effect....*

After hearing the sworn testimony of the parties and after considering the written evidence provided by the tenant, I find on a balance of probabilities that the landlord has included provisions in the Agreement that contravene the *Act*. For this reason, I issue the following orders to the landlord:

- The landlord is not allowed to place restrictions on the tenant's use of the telephone in the living room of the rental unit;
- The landlord is not allowed to place restrictions on who may visit the tenant at the rental unit;
- The landlord is not allowed to restrict the tenant from having guests visit the rental unit after 8:00 p.m.;
- The landlord is not allowed to prevent guests from staying overnight in the rental unit;
- The landlord is not allowed to require the tenant to close windows in the rental unit; and
- The landlord is not allowed to place restrictions on when the tenant is allowed to cook or use the kitchen in the rental unit.

Since the tenant has been successful in this application, I allow them to recover their \$100.00 filing fee from the landlord.

Conclusion

I set aside the 2 Month Notice of August 2019 and any other notices to end tenancy issued to the tenant thus far in this tenancy. The existing Notices to End Tenancy are of no force or effect. This tenancy continues until ended in accordance with the *Act*.

I order the landlord to provide the tenant with at least 24 hours written notice to enter the tenant's rental unit, except in true emergency situations.

I also issue the following orders to the landlord:

- The landlord is not allowed to place restrictions on the tenant's use of the telephone in the living room of the rental unit.

- The landlord is not allowed to place restrictions on who may visit the tenant at the rental unit.
- The landlord is not allowed to restrict the tenant from having guests visit the rental unit after 8:00 p.m.
- The landlord is not allowed to prevent guests from staying overnight in the rental unit.
- The landlord is not allowed to require the tenant to close windows in the rental unit.
- The landlord is not allowed to place restrictions on when the tenant is allowed to cook or use the kitchen in the rental unit.

I issue a monetary award in the tenant's favour in the amount of \$100.00. Since this tenancy is continuing, I order the tenant to reduce a future monthly rent payment by \$100.00 in order to implement this monetary award.

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: October 22, 2019

Residential Tenancy Branch