



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNL FFT LAT LRE OLC

Introduction

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

- Cancellation of a 2 Month Notice to End Tenancy for Landlord's Use pursuant to section 49;
- Authorization to recover the filing fee from the tenant pursuant to section 72;
- Authorization to change the locks to the rental unit pursuant to section 70;
- An order restricting the landlord's right to enter the rental unit pursuant to section 70; and
- An order that the landlord comply with the Act, regulations or tenancy agreement pursuant to section 62.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

As both parties were present service was confirmed. The parties each confirmed receipt of the other's materials. While the landlord gave some testimony later in the hearing disputing the manner in which the tenant's materials were served they confirmed that they have received the materials. Based on the evidence I find that both parties were served with the respective materials in accordance with sections 88 and 89 of the *Act* and in any event sufficiently served pursuant to section 71(2)(c).

Issue(s) to be Decided

Should the 2 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Should the tenant be authorized to change the locks to the rental unit? Should the landlord's right to enter the rental unit be restricted?

Should the landlord be ordered to comply with the Act, regulations or tenancy agreement?

Is the tenant entitled to recover the filing fee from the landlord?

Background and Evidence

This periodic tenancy began on August 15, 2017. The landlord explained that the tenancy originally began as part of the conditions of the tenant's employment with the landlord and has continued after the employment was ended. The rental unit is a detached 1-Bedroom home. The current monthly rent is \$550.00 payable on the first day of each month. The tenant continues to reside in the rental unit. There is no written tenancy agreement for this tenancy.

There have been several other Notices to End Tenancy issued by the landlord and dealt with at hearings under the file numbers on the first page of this decision. The previous notices were issued for Landlord's Use, Non-Payment of Rent, and End of Employment with the Landlord.

The landlord issued a 2 Month Notice to End Tenancy for Landlord's Use dated August 21, 2019, realized there was a typographic error in the notice and issued an amended notice dated August 24, 2019. The tenant confirmed they had been served with both notices and the reason provided on both notices was that the rental unit will be occupied by the landlord, or close family member.

The landlord explained that they are currently residing in a larger building located nearby in the same municipality. They testified that they intend for caretakers to move in to their current property and that they will move into the rental property. The landlord gave evidence about the ongoing acrimonious relationship with the tenant and their displeasure with the tenant's failure to maintain the rental property. The landlord detailed the history of this tenancy, their ongoing efforts to end the tenancy and that the relationship with the tenant has escalated into accusations of criminal activities and tortious matters.

The tenant questions the good faith intention of the landlord to issue the 2 Month Notice as there have been several earlier attempts to end this tenancy. The tenant said that the previous Notices to End Tenancy were issued in 2018.

The tenant also seeks an order restricting the landlord's access to the rental unit and for authorization to change the keys, submitting that the landlord has attended at the rental property without sufficient notice and has entered the suite without authorization or notice. The tenant submitted into evidence copies of correspondences, a written timeline and submissions.

Analysis

When a tenant files an application to dispute a 2 Month Notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 2 Month Notice. The tenant submits that they believe the landlord has not issued the 2 Month Notice in good faith.

Residential Tenancy Branch Policy Guideline number 2 notes that good faith is an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage. A claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End the Tenancy.

This Guideline reads in part as follows:

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 they do not have an ulterior motive for ending the tenancy.

The tenant has raised the good faith intention of the landlord which I find has basis. In the present case the 2 Month Notice follows several other notices issued by the landlord in an attempt to end the tenancy in 2018. I find that the issuance of a multiplicity of types of notices to demonstrate that the landlord's primary concern is to end the tenancy rather than to occupy the rental unit. Furthermore, the landlord has given

testimony about their desire to end the acrimonious relationship between the parties, their interest in performing repairs and maintenance, and their concern for the value of the rental property.

The landlord gave some testimony about some of the circumstances for moving into the rental unit but has provided little documentary evidence in support. While they testified that other employees will occupy the property where the landlord currently resides, they said that the agreement for this occupation is not recorded in writing and is purely verbal. From the evidence before me I do not find that the landlord's reason for seeking to end this tenancy is primarily motivated to allow a family member to reside in the unit.

I find on the balance of probabilities that the intention and motivation of the landlord is to end this tenancy, and any future occupancy of the rental unit is a secondary concern. Therefore, the 2 Month Notice is cancelled. The tenancy will continue until it is ended in accordance with the Act.

I find that the tenant has provided insufficient evidence in regards to the other matters claimed in their application. The tenant's evidence regarding the landlord's ingress is primarily comprised of accusations, conjecture and some correspondence. I find that I am not satisfied that there is sufficient basis for an order allowing the tenant to change the locks to the rental unit, an order restricting the landlord's rights or an order that the landlord comply is appropriate. I will note that the provisions of the *Act* detailing access to the rental unit applies to both parties and they would be well advised to conduct themselves in accordance with the *Act*.

As the application has some merit I find that the tenant may deduct the \$100.00 filing fee from the next payment of monthly rent.

Conclusion

The 2 Month Notice is cancelled and of no further force or effect. This tenancy continues until ended in accordance with the *Act*.

The tenant may make a one-time deduction of \$100.00 from their next monthly rent payment.

The balance of the tenant's application is dismissed without 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: October 25, 2019

Residential Tenancy Branch