



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding THE RESIDENTIAL GROUP REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, FFT

Introduction

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

- cancellation of the Two Month Notice to End Tenancy for Landlord's Use of Property, pursuant to section 49; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord's property manager (the "property manager") and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified that he served the landlord with his application for dispute resolution via registered mail on September 20, 2019. A Canada Post receipt evidencing the September 20, 2019 mailing was entered into evidence. The property manager confirmed receipt of the tenant's application for dispute resolution but could not recall on what date. I find that the landlord was served with the tenant's application for dispute resolution in accordance with section 89 of the *Act*.

I note that section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Issues to be Decided

1. Is the tenant entitled to cancellation of the Two Month Notice to End Tenancy for Landlord's Use of Property, pursuant to section 49 of the *Act*?
2. Is the tenant entitled to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*?
3. If the tenant's application is dismissed and the landlord's Notice to End Tenancy is upheld, is the landlord entitled to an Order of Possession, pursuant to section 55 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on September 1, 2018 and is currently ongoing. Monthly rent in the amount of \$3,500.00 is payable on the first day of each month. A security deposit of \$1,750.00 was paid by the tenant to the landlord.

Both parties agree that the tenant was personally served with a Two Month Notice to End Tenancy for Landlord's Use of Property with an effective date of October 31, 2019 (the "Two Month Notice") on August 27, 2019.

The property manager testified that the landlord informed him that the landlord planned on moving into the subject rental property with his daughter who started school in the area in September 2019. No evidence to support this testimony was entered into evidence.

The tenant testified that he does not believe that the landlord is planning on moving into the subject rental property. The tenant testified that the landlord previously attempted to evict him with a One Month Notice to End Tenancy for Cause (the "One Month Notice") but that the One Month Notice was cancelled in a previous Residential Tenancy Branch Decision. The file number for the previous decision was entered into evidence and is located on the cover page of his decision. The previous decision is dated April 3, 2019. The tenant alleged that the landlord is acting in bad faith and is trying to evict him with a Two Month Notice because he failed to evict him with the One Month Notice.

Analysis

Based on the Two Month Notice entered into evidence and the testimony of both parties, I find that service of the Two Month Notice was effected on the tenant on August 27, 2019, in accordance with section 88 of the *Act*.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, **the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.** [emphasis added]

Section 49(3) of the *Act* allows a landlord to end a tenancy if the landlord intends in good faith to move in themselves, or allow a close family member to move into the unit. Section 49(1) of the *Act* defines a close family member as: (a) the individual's parent, spouse or child, or (b) the parent or child of that individual's spouse.

Policy Guideline 2 explains the 'good faith' requirement as requiring 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.

I find that the landlord has failed to prove that he honestly intends to move into the subject rental property and has no ulterior motive to evict the tenant. The onus to prove the reason stated on the Two Month Notice for ending the tenancy is on the landlord. The landlord did not enter into evidence any documentation to support his intention to move into the subject rental property. Useful evidence would have included signed statements from the landlord and his daughter about their intention to move into the subject rental property and school documents evidencing the landlord's daughter's attendance at a school in the area.

I also find that the landlord has failed to prove that he did not have an ulterior motive in serving the tenant with the Two Month Notice a few months after the One Month Notice was dismissed.

Pursuant to the above, I cancel the Two Month Notice and find that it is of no force or effect. This tenancy will continue in accordance with the *Act*.

As the tenant was successful in his application, I find that he is entitled to recover the \$100.00 filing fee from the landlord, pursuant to section 72 of the *Act*.

Section 72(2) of the *Act* states that if the director orders a landlord to make a payment to the tenant, the amount may be deducted from any rent due to the landlord. I find that the tenant is entitled to deduct \$100.00, on one occasion, from rent due to the landlord.

Conclusion

The Two Month Notice is cancelled and of no force or effect.

The tenant is entitled to deduct \$100.00, on one occasion, from rent due to the landlord.

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: November 19, 2019

Residential Tenancy Branch