



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL DRI OLC FFT

Introduction

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

- A cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice") pursuant to section 49 of the *Act*;
- An Order Directing the Landlord to comply with the *Act* pursuant to section 62;
- An Order disputing a rent increase pursuant to section 41; and
- A return of the filing fee pursuant to section 72 of the *Act*.

Tenant J.G. and the landlord attended the hearing. Both were given a full opportunity to be heard, to present their sworn testimony and to make submissions.

The tenant confirmed receipt of the landlord's 2 Month Notice for Landlord's Use of Property ("2 Month Notice") after it was given to him in person on September 16, 2019 and is found to have been duly served with the 2 Month Notice in accordance with section 88(a) of the *Act*.

The landlord confirmed receipt of the tenant's application for dispute and evidentiary package after it was given to him in person and is found pursuant to section 88(a) & 89(a) of the *Act* to have been duly served in accordance with the *Act*.

The tenant disputed having received the landlord's evidentiary package. The landlord explained he provided a copy of his evidence package to the tenant's mother on approximately November 14, 2019. The landlord confirmed he did not include a 'Proof of Service' document with this package. Rule of Procedure 3.16 states, "At the hearing, the respondent must be prepared to demonstrate to the satisfaction of the arbitrator that

each applicant was served with all their evidence as required by the Act and the Rules of Procedure.” While, *Residential Tenancy Policy Guideline #12* states, “proof of service personally should include the date and time of service, the location where service occurred, description of what was served, the name of the person who was served, and the name of the person who served the documents.”

It continues by stating -

Proof of service personally on an adult who apparently resides with the tenant should include:

- either an acknowledgment of the date and time of service, the location where service occurred, description of what was served, the name of the person who was served, and the name of the person who served the documents as well as confirmation that the person is an adult; or,
- witness confirmation of service on the adult including date and time of service, the location where service occurred, description of what was served, the name of the person who was served, and the name of the person who served as well as a description of how the witness knows the person served is an adult who apparently resides with the tenant.

Failure to prove service may result in the matter being dismissed, with or without leave to reapply

I find the landlord has failed to provide any proof that the evidence was served on the tenant in the method described at the outset of the hearing. Pursuant to the direction provided in *Policy Guideline #12*, I therefore decline to consider the landlord’s evidence package adequately served on the tenant and will not consider it in my analysis.

Issue(s) to be Decided

Can the tenant cancel the landlord’s 2 Month Notice?

Can the tenant dispute a landlord’s rent increase?

Should the landlord be directed to comply with the *Act*?

Can the tenant recover the filing fee?

Background and Evidence

The tenant explained no written tenancy agreement existed between the parties but confirmed they began occupying the rental unit in December 2015. Rent is presently \$1,050.00 per month and a security deposit of \$250.00 paid at the outset of the tenancy continues to be held by the landlord. The tenant said rent was originally \$500.00 per month for a single room rented at the outset of the tenancy and rose to \$900.00 per month following his rental of a second bedroom in the basement. The tenant said a third rent increase was issued which brought him to the current rental rate of \$1,050.00 per month.

On September 16, 2019, the landlord issued the tenant a 2 Month Notice to End Tenancy which stated, "The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child, or the parent or child of that individual's spouse)." The landlord explained he wished to take possession of the rental unit so his father could move "downstairs." The landlord said the unit in question is in the basement of the main home. He described his father as being in his mid-70s and testified that his father wished to relocate to the basement because the landlord's children were loud and because he was recently diagnosed with sleep apnea. Additionally, the landlord said his father had undergone knee surgery in approximately October 2018 and would benefit from living in the basement. The landlord continued by explaining he also wished to use a portion of the basement to house his office, which was currently located off-site.

The tenant disputed the landlord's motivation in issuing the 2 Month Notice. The tenant said he had recently rejected a rental increase of \$350.00 which the landlord had sent to him by text message. The tenant questioned the landlord's good faith, noting he had never previously heard any information about a possible relocation of the landlord's father to the basement and the tenant explained the landlord's father was currently in India. The landlord confirmed his father was presently in India but stated he would be returning to Canada at the end of January 2020 or the beginning of February 2020.

In addition to an application seeking to cancel the landlord's 2 Month Notice, the tenant has applied for an order directing the landlord to comply with the *Act*, specifically section 42 which regulates the timing and notice of rent increases. Additionally, the tenant sought to dispute the rent increase proposed by the landlord in his text message dated September 3, 2019 and provided in the tenant's evidentiary package.

Analysis

I will begin my analysis by first considering the tenant's application to cancel the landlord's 2 Month Notice to End Tenancy, and then will turn my analysis to the portion of the application directing the landlord to comply with the *Act* and disputing an additional rent increase.

On September 16, 2019 the tenant was served with a 2 Month Notice citing Landlord's Use of Property. Rules of Procedure 6.6 states, "The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely 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." In this case, the landlord had the burden of proving the validity of the 2 Month Notice served on the tenant.

At the hearing, the landlord cited a variety of factors related to the issuance of the 2 Month Notice. Specifically, the landlord said he wished to relocate his office out of its present commercial space to the basement of the home, he explained that his father wished to occupy a bedroom in the rental unit, and he noted ongoing problems with the tenant's constant presence of guests in the suite. The landlord said his father was presently occupying a bedroom in the upstairs suite and he cited noise from the children, sleep apnea and knee issues as reasons for his father wanting to relocate to the basement.

Residential Tenancy Policy Guideline 2A states, "Section 49 of the *Act* allows a landlord to end a tenancy if the landlord...intends, in good faith, to occupy the rental unit, or a close family member intends in good faith, to occupy the unit." It continues by stating, "Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant, they do not have an ulterior motive for ending the tenancy, and they are not trying to avoid obligations under the RTA and MHPTA or the tenancy agreement." Additionally, it states, "If a landlord has rented out a rental unit in their house under a tenancy agreement (for example, a basement suite), the landlord can end the tenancy to reclaim the rental unit as part of their living accommodations."

After having considered the testimony of both parties and following a review of the tenant's evidentiary package, I find the landlord has failed to provide sufficient evidence that he intends to use the rental unit for the reasons cited in the 2 Month Notice. While the landlord said his father would occupy the unit because of sleep apnea, due to noise in the home and because of a knee issue for which he underwent surgery one year ago, I find the landlord provided little evidence in support of the notice or the reasons cited. Additionally, I question how any of the reasons cited by the landlord would be alleviated by his father's occupation of the basement. Finally, I find the fact that the landlord's father remains in India until January/February 2020 to be an indication that the landlord may be motivated by reasons other than those listed at the hearing and thus contrary to the good faith requirement of Policy Guideline #2A.

Some information was presented by the landlord that he intended to convert part of the rental unit into an office space, however, this information was inconsistent with the information presented that his father intended to occupy the unit. Furthermore, there was little evidence or indication that any steps had been taken to accomplish such an office move. For these reasons, I find the tenant was successful in cancelling the landlord's 2 Month Notice. This tenancy shall continue until it is ended in accordance with the *Act*.

Section 42(1) of the *Act* states, "A landlord must not impose a rent increase for at least 12 months after which ever the following applies: (a) if the tenant's rent has not previously been increased, the date on which the tenant's rent was first payable for the rental unit; (b) if the tenant's rent has previously been increased, the effective date of the last rent increase made in accordance with the *Act*." It continues by stating at 42(2) & (3) "A landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase" and "A notice of a rent increase must be in the approved form". While Section 42(4) notes, "If a landlord's notice of a rent increase does not comply with subsection (1) and (2), the notice takes effect on the earliest date that does comply."

Section 43 of the *Act* dictates the amount by which landlord may increase a tenant's rent. It says, "A landlord may impose a rent increase only up to the amount, calculated in accordance with the regulations, ordered by the director or an application under subsection (3), or agreed to the tenant in writing."

I find all rent increases imposed on the tenant by the landlord have failed to follow any of the provisions outlined in either section 42 or 43 of the *Act*. The tenant testified that

his rent increased from \$500.00 to \$900.00 per month when he took possession of a second bedroom. The rent then increased to its present rate of \$1,050.00 per month and was set to increase to \$1,400.00 per month in October 2019. I find these rent increases have been imposed counter to manner allowed in sections 42 and 43 of the *Act* and I find the tenant's application disputing the additional rent increases to be successful.

I order that current rent be returned to \$900.00 per month starting January 1, 2020. I find the nature of the tenancy changed significantly when the tenant took possession of the second bedroom and therefore the new rental rate agreed upon at the time to accurately represent the intentions of the parties. The landlord is ordered to ensure all future rent increases are done in accordance with the *Act*.

Conclusion

The landlord's 2 Month Notice dated, September 16, 2019 is dismissed and is of no force or effect. This tenancy shall continue until it is ended in accordance with the *Act*.

The tenant's rent starting January 1, 2020 shall be \$900.00 per month.

The tenant may withhold \$100.00 from a future rent payment on one occasion in full satisfaction for a return of the filing fee.

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: December 2, 2019

Residential Tenancy Branch