



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice"), pursuant to section 49; 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 call witnesses, and to make submissions.

The landlord confirmed receipt of the tenant's application for dispute resolution ('application'). In accordance with section 89 of the *Act*, I find that the landlord was 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*.

The tenant testified that he was served with the 2 Month Notice on November 15, 2019, which was posted on his door. The landlord testified that the 2 Month Notice was personally served to the tenant on November 14, 2019. As the tenant confirmed receipt of the 2 Month Notice dated November 14, 2019, I find that this document was duly served to the tenant in accordance with section 88 of the *Act*.

Background and Evidence

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.

This tenancy began on April 16, 2013. The most recent agreement was signed on April 11, 2018 for a fixed term tenancy for the period of April 16, 2018 to April 15, 2019, with monthly rent set

at \$850.00, payable on the 16th day of every month. The tenant paid a security deposit in the amount of \$850.00 at the beginning of the tenancy.

The landlord issued the 2 Month Notice dated November 14, 2019 with an effective move-out date of January 15, 2020 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 landlord provided the following background for why they had decided to issue the 2 Month Notice. The landlord's son has returned from overseas, and wants to convert the tenant's suite into a music studio. The landlord's son attended the hearing, and testified that he was a professional musician with a degree in music. The son testified that he had attempted to find a suitable studio, but he was unable to find something that suited his needs, noting location, pricing, and proximity to his aging and ill parents. The son testified that he would reside in one of the bedrooms in the home, and use the basement suite for his music studio where he would teach. The landlord provided in evidence the son's credentials, a layout of the intended music studio, medical paperwork to support the ailing health of the landlords, and results of searches for prospective locations for a music studio.

The son testified that the basement suite was ideal given the criteria. Additionally, the basement suite had a separate door and the ability to accommodate a teaching area, storage space, library, and practice space.

The landlord admitted that this is a second Notice to End Tenancy issued to the tenant, but failed at the first hearing held on November 14, 2019 as they were unaware that the onus was on the landlords to support that they had issued the Notice in good faith. The son testified that his parents were also dealing with medical issues, and were not well prepared for the hearing. The landlord issued a new 2 Month Notice as they require the space as testified to in this hearing.

The tenant is disputing the 2 Month Notice as he does not believe that the landlord issued the 2 Month Notice in good faith. The tenant provided, in his evidence package, the decision from the previous RTB hearing held on November 14, 2019. The tenant was previously issued a 2 Month Notice on August 21, 2019, which he disputed. The tenant was successful, and in the decision dated November 14, 2019, the Arbitrator ordered that the 2 Month Notice be cancelled as the landlord failed to satisfy the burden of proof that they had issued the 2 Month Notice in good faith, and will occupy the rental unit as intended.

The tenant testified that he was served with this second notice immediately after the hearing was held and the first 2 Month Notice was cancelled. The tenant also pointed out that the

landlord has provided several reasons for why they wish to end this tenancy, and had made no mention of the music studio in the last arbitration hearing. The tenant testified that the landlord has continued to contravene the *Act*, and has entered his rental unit without his permission. The landlord responded that they had only entered the tenant's rental unit with his permission to do so, or in the case of an emergency.

Analysis

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 landlord stated that they had issued the 2 Month Notice in order for the basement to be utilized by the son as a music studio, I find that the tenant had raised doubt as to the true intent of the landlord in issuing the 2 Month Notice. The burden, therefore, shifts to the landlord to establish that they do not have any other purpose to ending this tenancy.

The undisputed history between the two parties includes one previous, unsuccessful attempt to end this tenancy by the landlord on the basis of a 2 Month Notice for Landlord's Use. A hearing was held on November 14, 2019, and the landlords issued a new 2 Month Notice immediately after a decision was rendered by the Arbitrator. The new 2 Month Notice is dated November 14, 2019, and the landlord testified that they had served the tenant the new Notice on the same date.

I have considered the sworn testimony of both parties, as well as the evidence before me. I note that the son AL was in attendance at both hearings, and despite the detailed evidence and testimony about the son's intention to use the basement suite as a music studio, I find there that

neither the son nor the landlord made mention of this in the previous hearing. Although I accept the testimony of the landlord and their son that the landlord was unprepared for the last hearing, I find that the issuance of a new 2 Month Notice shortly after the last hearing raises questions about the landlord's true intentions in ending this tenancy. Although I accept the testimony of the landlord that they were burdened with medical issues during this time period, I am not satisfied that the landlord has provided a sufficient explanation for why the music studio was not mentioned in the last hearing, especially when the son was also in attendance on November 14, 2019. Although I accept that circumstances may change, which would necessitate the issuance of a new Notice to End Tenancy, this second notice was issued immediately after the Arbitrator cancelled the first 2 Month Notice. I find the changing testimony of the landlord in such a short period of time raises questions about the landlord's true intentions in ending this tenancy. I find that the landlord has not met their burden of proof to that this second 2 Month Notice was issued in good faith.

Accordingly, I allow the tenant's application to cancel the 2 Month Notice. The landlord's 2 Month Notice, dated November 14, 2019, is hereby cancelled and is of no force and effect. This tenancy is to continue until it is ended in accordance with the *Act*.

The tenant testified in the hearing that the landlord has entered his rental unit without his permission. I remind the landlord of their obligations as set out below:

Section 29 of the *Act* prohibits the landlord's right to enter the rental suite except with proper notice or the tenants' permission. The landlord's right to enter a rental unit is restricted, and the landlords must not enter unless:

- (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;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

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

I allow the tenant to recover the filing fee for this application.

Conclusion

The tenant's application to cancel the landlord's 2 Month Notice is allowed. The Landlord's 2 Month Notice, dated November 14, 2019, is cancelled and is of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

I issue a \$100.00 Monetary Order in favour of the tenant for recovery of the filing fee. I allow the tenant to implement the above monetary award by reducing future monthly rent payments until the amount is recovered 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 landlord(s) must be served with **this Order** as soon as possible.

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: January 23, 2020

Residential Tenancy Branch