



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL FFT LAT LRE

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 Notices to End Tenancy for Landlord's Use of Property ("2 Month Notice"), pursuant to section 49;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- an order to allow the tenant to change the locks to the rental unit pursuant to section 70; and
- authorization to recover his 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 applications for dispute resolution ('applications'). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenant's applications. 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 filed 2 applications for cancellation of a 2 Month Notice to End Tenancy for Landlord's Use. The landlord confirmed that she had served the tenant copies of the same 2 Month Notice dated December 19, 2019. As the tenant confirmed receipt of the 2 Month Notice dated December 19, 2019, I find that this document was duly served to the tenant in accordance with section 88 of the *Act*.

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?

Is the tenant entitled to an order to suspend or set conditions on the landlord's right to enter the rental units?

Is the tenant entitled to an order to allow the tenant to change the locks to the rental units?

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

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 month-to-month tenancy began in March of 2015. The tenant is currently paying \$950.00 in monthly rent, payable on the first of the month. The tenant paid a security deposit in the amount of \$475.00, which the landlord still holds.

The landlord issued the 2 Month Notice dated December 19, 2019, with an effective move-out date of February 29, 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. They testified that the 2 Month Notice was issued as the circumstances in the landlord's life have necessitated more space. The landlord currently resides in the upper floors of the home, while the tenant rents out the basement suite. The landlord started her counselling practice in 2017, which she operates out of her home office. The landlord testified that in order for her to maintain a professional practice out of home, her partner must leave the home when clients come to see her. The landlord testified that she has inadequate storage as the home does not have a garage or carport.

The landlord testified that her daughter also requires more space to accommodate her projects. The daughter attended the hearing, and testified that changes would be made

to the basement suite, such as the removal of the cabinets. The daughter testified that she had already ordered furniture for the already partially furnished suite.

The landlord testified that her life has changed substantially over the years, and she required more space to accommodate her growing practice, as well as the addition of her partner who now resides with her. The landlord testified that she did attempt to purchase a new home which better suited her needs, but was unable to sell the home despite two price reductions. The landlord and her realtor expressed concern in the hearing about the tenant's behavior which made showing the home difficult to prospective buyers, such as the tenant's tires and undergarments being left in plain view. After unsuccessful attempts, the landlord decided to keep the home and utilize the current, existing space.

The tenant is disputing the 2 Month Notice as he does not believe that the landlord had issued the 2 Month Notice in good faith. The tenant testified that the relationship between the two of them has deteriorated greatly, and that this was the landlord's third attempt at ending this tenancy in the past year, after being unsuccessful the first two times.

The tenant testified that on June 4, 2019 he was issued a 1 Month Notice to End Tenancy, with an effective date of July 31, 2019. The tenant disputed this notice on June 11, 2019. On June 22, 2019, the landlord applied for dispute resolution for an early termination of the tenancy. A hearing was held on July 4, 2019 to deal with the landlord's application, which was dismissed by the Arbitrator. A hearing was held on July 22, 2019 to deal with the tenant's application to cancel the 1 Month Notice. The 1 Month Notice was cancelled on July 24, 2019 by the Arbitrator. The tenant was subsequently issued the 2 Month Notice on December 19, 2019. The tenant testified that the landlord is seeking different methods to end this tenancy as she does not like the tenant.

In addition to the tenant's application to cancel the 2 Month Notice, the tenant also applied for an order to suspend or set conditions on the landlord's right to enter his rental unit, and authorization to change the locks. The tenant feels that the landlord has disregarded his privacy and rights to quiet enjoyment, and fears for his personal safety.

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 to occupy the suite, I find that the tenant had raised doubt as to the true intent of the landlord in issuance of this notice. The burden, therefore, shifts to the landlord to establish that they do not have any other purpose to ending this tenancy.

I find that the relationship between the tenant and landlord has deteriorated since the beginning of this tenancy in 2015, especially in the last year. The landlord has made repeated attempts to end this tenancy on different grounds, but has been unsuccessful in doing so. The landlord and her realtor also expressed concern about the difficulty in showing the property due to the tenant's lack of cooperation.

I find that the landlord has not met their burden of proof to show that they do not have any other purpose in ending this tenancy. Despite the explanation provided about the need more for more space, I find that the landlord has not met their burden of proof to show that they do not have any other purpose in ending this tenancy. I find that the testimony of both parties during the hearing, as well as the evidence presented, raised questions about the landlord's good faith. The landlord has made three attempts to end this tenancy between June 4, 2019 and December 19, 2019, within a span of six

months. Each attempt was under a different section of the *Act*. Although the landlord does have the right to seek the end of this tenancy on the grounds provided under the *Act*, I find that the evidence supports the deterioration of the relationship between the two parties, and the frustration of the landlord in dealing with the tenant. Based on a balance of probabilities and for the reasons outlined above, I find that the landlord has not met their onus to show that they truly require the basement suite for their own use, and that there is no ulterior motive for ending this tenancy.

I therefore allow the tenant's application to cancel the 2 Month Notice. The 2 Month Notice dated December 19, 2019 is hereby cancelled, and is of no force or effect. The tenancy will continue until ended in accordance with the *Act*.

The tenant also applied for authorization to change the locks, and for an order to suspend or set conditions on the landlord's right to enter the rental unit.

I am not satisfied that the tenant had provided sufficient evidence to support that the landlord had breached the tenancy agreement or the *Act* to the extent that justifies the changing of the locks, or the need to suspend or set conditions on the landlord's access. On this basis, I dismiss the tenant's applications to change the locks, and suspend or set conditions on the landlord's access to his rental unit. I remind both parties of their obligations as set out in Policy Guideline #7, which was set out by the Arbitrator in their decision dated July 24, 2019.

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 December 19, 2019, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

I allow the tenant to implement a monetary award of \$100.00 for recovery of the filing fee, by reducing a future monthly rent payment by that amount. 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 must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be

filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court

The remainder 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: February 26, 2020

Residential Tenancy Branch