



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFT, CNL**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of a Two Month Notice to End Tenancy for Landlord's use ("Two Month Notice") pursuant to section 49;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The tenant attended with the advocate SW ("the tenant"). The landlord attended. The parties had opportunity to provide affirmed testimony, present evidence and make submissions. The hearing process was explained. I find each party served the other with their materials in accordance with the *Act*.

Issue(s) to be Decided

Is the tenant entitled to:

- Cancellation of a Two Month Notice to End Tenancy for Landlord's use ("Two Month Notice") pursuant to section 49;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

Background and Evidence

The parties entered into a monthly tenancy agreement in September 2017 with monthly rent payable on the first of the month. A copy of the tenancy agreement was submitted.

There was a previous hearing on January 3, 2020 and a decision was entered on January 29, 2020 under the file number referenced on the first page. The tenants applied under multiple headings, including repairs and a reduction in rent for services or facilities agreed upon but not provided. A one-time monetary award in the tenant's favour was granted.

Before the previous hearing, but after the tenants brought the Application, the landlord issued the Two Month Notice on December 25, 2019. A copy of the Notice was submitted. The tenants brought an Application for Dispute Resolution on January 6, 2020 shortly after the previous hearing.

The landlord testified that the landlord intended to live in the unit. The landlord explained that he was required to move out of his current accommodation and needed the tenants to vacate the rental unit so he could move in. The landlord testified that the issuance of the Notice is wholly unrelated to their relationship and the outcome of any previous dispute hearings.

The tenants claimed that the landlord's issuance of the Notice is retaliatory for the above-mentioned Application. The tenants submitted considerable documentary material such as correspondence with the landlord complaining of many issues over at least two years, including allegations of harassment by the landlord, the need for repairs of various kinds and so on. The tenants submitted letters from an advocate formally demanding the landlord attend to certain matters, one as recently as October 15, 2019.

The tenants questioned the timing of the Notice and believed it to be retaliatory. The tenants pointed to the previous monetary award and testified to many ongoing issues with the landlord.

Analysis

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure requires the landlord to provide their evidence submission first, as the landlord has the burden of proving sufficient evidence to terminate the tenancy for the reasons given on the Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Residential Tenancy Branch Policy Guideline - 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 tenants have raised the good faith intention of the landlord which I find has some basis. The timing of the Notice so promptly after an earlier dispute resolution claim was commenced by the tenants raises some natural doubts about the bona fide intentions of the landlord. While the landlord provided some explanations about the reason for issuing the Notice and how the rental unit was needed by him, I find that I am not wholly convinced that there are no other factors which have given rise to the Notice.

I give greater weight to the tenants' evidence which I find credible and well supported by documentary evidence. I find, based on the testimony of the parties, that there have been several difficult interactions between the parties and they have an acrimonious relationship. The parties both testified that the tenants have made numerous requests for services and repairs to the rental unit which is well illustrated in the materials submitted by the tenants. The tenants testified that they were granted a monetary award at a previous dispute resolution hearing but feel that not all issues have been adequately addressed.

I find that while the landlord may intend to use the rental unit for the purposes stated on the Notice, that there may be additional reasons which fueled the issuance of the Notice. Therefore, I find that the good faith argument has some merit as I find that there are reasonable doubts about the intention of the landlord to end this tenancy. Therefore, the Two Month Notice is cancelled. This tenancy will continue until it is ended in accordance with the Act.

As the tenants have been successful in this application, I direct that the tenants are granted a monetary award in the amount of \$100.00 for reimbursement of the filing fee which may be deducted from rent on a one time basis only.

Conclusion

The Two Month Notice to End Tenancy for Landlord's Use is cancelled and of no effect.

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: March 30, 2020

Residential Tenancy Branch