



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL MNDCT

Introduction

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

- Cancellation of a 2 Month Notice to End Tenancy for Landlord's Use pursuant to section 49; and
- A monetary award for damages and loss pursuant to section 67.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenant was assisted by their advocates.

As both parties were present service was confirmed. The parties each testified that they had been served with the respective materials. Based on the testimonies I find the parties were served with all relevant materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Should the 2 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Is the tenant entitled to a monetary award as claimed?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced

here. The principal aspects of the claims and my findings around each are set out below.

The parties agree on the following facts. This periodic tenancy began in May 2016. The rental unit is a two-bedroom suite with an unfinished basement of between 600 to 900 square feet total. The current monthly rent is \$1,508.00 payable on the first of each month. The landlord has issued a Notice of Rent Increase dated January 30, 2020 with an effective date of May 1, 2020 raising the rent to \$1,547.00.

There was a previous hearing on September 16, 2019 under the file number on the first page of this decision wherein the tenant disputed a 1 Month Notice to End Tenancy for Cause. Another arbitrator found in the tenant's favour and cancelled the 1 Month Notice.

The landlord has now issued a 2 Month Notice to End Tenancy for Landlord's Use dated February 18, 2020. The landlord indicates the reason for the tenancy to end is that the landlord or a close family member intends to occupy the rental unit. The landlord gave evidence that it is their adult son and his family who intends to reside in the rental unit. The landlord gave evidence that their adult son intends to sell their current residence to move their family of 4 into the rental suite. The landlord testified that in addition to their son moving in they also wish this tenancy to end as there have been a number of ongoing disagreements with the tenant on maintenance and tenancy issues.

The tenant confirmed that there have been ongoing issues with the landlord including requests for repairs and maintenance made by the tenant and the landlord expressing disapproval of the tenant's use of the property.

The tenant submits that due to the landlord's failure to maintain the rental unit in a proper condition they have incurred monetary costs and losses as they have had to purchase space heater when the gas fireplace was not functioning and they purchased medication to deal with symptoms from gas leaks into the rental suite. The tenant provided some documentary evidence in support of their claim including a receipt for a heater, various online articles on the effects of gas and listings for alternative medications available.

Analysis

In order to evict a tenant for landlord's use of the property the landlord has the burden of proving, on a balance of probabilities, the reasons on the Notice.

The tenants raised the issue of the intention of the landlord; what I found was essentially a good faith argument.

Residential Tenancy Branch Policy Guideline number 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 landlord testified that in addition to the reason provided on the 2 Month Notice they wish this tenancy to end as there have been ongoing conflicts with the tenant. The landlord cited the relationship with the tenant, their frustration with the tenant's requests for repairs and maintenance and condition of the rental property as all contributing to their desire for this tenancy to end. I find that the landlord's testimony to be sufficient to demonstrate that there are additional reasons for the issuance of the present notice. I find that the landlord's unambiguous statements, repeated and confirmed when questioned under oath, to be clear evidence of their additional purpose.

Furthermore, I note that while the landlord has submitted a letter from their adult son stating their intention to move into the rental unit and a correspondence with a realtor inquiring about selling their present home, I find these documents are insufficient to demonstrate on a balance of probabilities that the adult son intends to move into the rental unit from their current residence. I find the landlord's testimony on this point to be vague and without convincing details.

I find on a balance of probabilities that the landlord has given evidence showing that there is no good faith and that there are other factors influencing the issuance of the present notice. Therefore, the 2 Month Notice is cancelled and of no further force or effect. The tenancy will continue until it is ended in accordance with the *Act*.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I find that the tenant has provided insufficient evidence in support of their monetary claim. While I accept the testimony of the tenant that some maintenance work was necessary in the rental unit I do not find there is sufficient evidence to demonstrate that the purchase of a heater or medication resulted from the deficiencies in the rental unit.

I also find little evidence that the issues in the rental unit arise from a violation of the *Act*, regulations or tenancy agreement on the part of the landlord. A rental unit may require periodic work to be done due to its age and usage. A landlord has a duty to make repairs when alerted in a reasonable time. I find insufficient evidence that the landlord did not perform or arrange repairs in a manner that is reasonable under the circumstances. As such, I find that the tenant has not met their evidentiary burden and dismiss this portion of the application seeking a monetary award.

I note parenthetically that the parties have given evidence that the landlord has issued a Notice of Rent Increase dated January 30, 2020 with an effective date of May 1, 2020 raising the rent to \$1,547.00.

While the tenant has not disputed the rent increase I find it appropriate to note that section 6 of the *Ministerial Order M089* issued March 30, 2020 pursuant to the State of Emergency declared on March 18, 2020 states that if a landlord gave a notice of rent increase before the date of the order and the effective date of the increase is after the date of the order, March 30, 2020, then the rent increase does NOT take effect during the period of the emergency order.

Conclusion

The 2 Month Notice of February 18, 2020 is cancelled and of no further force or effect. This tenancy continues until ended in accordance with the Act.

The portion of the application seeking a monetary award 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: April 27, 2020

Residential Tenancy Branch