



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDC, OLC, PSF, LAT, FF

Introduction

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

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to change the locks to the rental unit pursuant to section 70;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the tenant served the landlord with the notice of hearing package via Canada Post Registered Mail on December 30, 2019. Both parties also confirmed the tenant served the landlord with the submitted documentary evidence via Canada Post Registered Mail on February 13, 2020. Both parties confirmed the landlord served the tenant with the submitted documentary evidence via Canada Post Registered Mail.

I accept the undisputed affirmed evidence of both parties that the notice of hearing and the combined documentary evidence of both parties were served and received via Canada Post Registered Mail. Both parties are deemed sufficiently served as per section 90 of the Act.

The tenant also filed an amendment including a dispute of a 2 month notice dated January 7, 2020. Both parties confirmed in their affirmed testimony that the tenant served the landlord with the amendment via Canada Post Registered Mail on January 13, 2020. On this basis, I find that both parties have been properly served as per section 90 of the Act with the amendment.

Preliminary Issue(s)

The tenant's application was clarified. The tenant confirmed that the application for dispute consists of several issues unrelated to the tenant's primary request which was to dispute the landlord's notice to end tenancy issued for unpaid rent. Discussions revealed that both parties had been previously advised of this same situation in a Decision dated January 3, 2020. As such, I find that the tenant's request for a monetary order, an order for the landlord to comply, an order for the landlord to provide services or facilities and an order authorizing the tenant to change the locks to be unrelated to the main issue for an order cancelling the 10 Day Notice for Unpaid Rent and the amendment for an order to cancel the 1 month notice to be unrelated as per Rule 2.3 of the Rules of Procedure. As such, these portions of the tenant's application are dismissed with leave to reapply. Leave to reapply is not an extension of any limitation period.

On March 2, 2020 an interim decision was made granting the tenant's request to cancel the 10 Day Notice. An adjournment was ordered to continue the hearing regarding the tenant's amendment which added the request to cancel the landlord's 2 month notice.

On May 5, 2020 the hearing was resumed and both parties attended, made submissions and presented evidence.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 2 month Notice?
Is the tenant entitled to recovery of the filing fee?

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 / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Both parties confirmed the landlord served the tenant with a 2 month notice to end tenancy issued for landlord's use of property dated January 7, 2020. The 2 month notice sets out an effective end of tenancy date of April 30, 2020 and the reason selected as:

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 tenant provided written details in which a reference is made to a previous Residential Tenancy Branch Decision dated January 3, 2020 (noted on the cover of this decision). The tenant argues that the landlord will not in good faith occupy the unit.

The landlord stated that it is her intent to vacate her residence in Toronto and move to Vancouver to occupy the rental unit. The landlord stated that this was to allow her son (R.S.) and his wife who is moving from Saudi Arabia to Toronto, Canada.

The tenant argued that a letter dated January 14, 2019 submitted by the landlord in a previous dispute was regarding the tenant not agreeing to increase the monthly rent and that the landlord had stated that she will sell the rental unit. Both parties confirmed that the landlord had a real estate agent attend to inspect the unit and list it for sale. The landlord stated that this was eventually cancelled to allow the landlord to issue the 2 month notice and occupy the unit herself. The tenant also argued that the landlord had issued two previous 10 Day Notice(s) for Unpaid Rent and a 1 month notice for cause which were all set aside.

Analysis

Section 49(4) of the Act sets out that a landlord may end a tenancy in respect of a rental unit where a close family member of the landlord intends in good faith to occupy the rental unit.

Where a tenant applies to dispute a 2 Month Notice, the onus is on the landlord to prove, on a balance of probabilities, the reasons on which the 2 Month Notice is based.

In this case, both parties confirmed that the landlord served the tenant with the 2 month notice dated January 7, 2020. The tenant claims that the landlord will not in good faith occupy the rental unit. The landlord stated that it was her intent to move from Toronto

to Vancouver to occupy the rental allowing her son (who lives in Toronto) to have privacy with his wife who will be moving from Saudi Arabia to Toronto.

Residential Tenancy Policy Guideline “2. Good Faith Requirement when Ending a Tenancy” helps explain this “good faith” requirement:

Good faith means a landlord is acting honestly, and they intend to do what 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...

The onus is on the landlord to demonstrate that they plan to occupy the rental unit for at least 6 months and they have no other ulterior motive.

I find in the circumstances that the landlord has failed to provide sufficient evidence of a good faith intent to occupy the rental unit. I refer to the tenant’s evidence that the landlord had issued two previous 10 Day Notice(s) to End Tenancy for Unpaid Rent, a 1 Month Notice to End Tenancy for Cause, a referenced letter dated January 14, 2020 from the landlord to the tenant requesting an increase to the rent which was refused and the landlord’s notification that the rental unit would be sold. The landlord also confirmed that one time a realtor was engaged to inspect and list the rental unit for sale.

I find that this evidence shows beside the landlord’s intent to occupy the rental unit, that the landlord had another purpose or motive to end the tenancy. This evidence raises a question of whether the landlord had a dishonest purpose. I note that during the hearing the landlord did not refer to any documentary evidence which would support her claim she would in good faith occupy the rental unit.

I find that the landlord has failed to satisfy me on a balance of probabilities of a good faith intent to occupy the rental unit. 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 tenant’s claims raise serious questions as to whether the landlord is acting in good faith in her issuance of the 2 Month Notice. The 2 Month Notice appears to be an attempt to end the tenancy after the landlord’s lack of success with two 10 Day Notice(s) and a 1 Month Notice.

The 2 Month Notice is set aside and is of no force and effect. This tenancy will continue until ended in accordance with the Act.

I find that the tenant is entitled to recovery of the \$100.00 filing fee. As the tenancy continues, I order that the tenant may withhold one-time \$100.00 from the next monthly rent upon receipt of this decision.

Conclusion

The tenant's application is granted.

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: May 5, 2020

Residential Tenancy Branch