



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes RR, MNDCT, PSF, CNL, OLC, RP

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 (the 2 Month Notice) pursuant to section 49;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- an order to the landlord to provide services or facilities required by law pursuant to section 65.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The parties acknowledged receipt of evidence submitted by the other. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Preliminary Issue – Severance

Residential Tenancy Branch (RTB) Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claims regarding the Two Month Notice and the continuation of this tenancy are not sufficiently related to any of the tenant's other claims to warrant that they be heard together. The parties were given a priority hearing date in order to address the question of the validity of the Notice to End Tenancy. In addition, the hearing took almost 60 minutes to conduct and due to time constraints, the only issue discussed was whether the tenancy was going to continue or not.

The tenant's other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the Notice to End Tenancy. I exercise my discretion to dismiss all the tenant's claims with leave to reapply except cancellation of the notice to end tenancy. This was explained to the tenant and he indicated he understood and appreciated the explanation.

Issue(s) to be Decided

Should the Two Month Notice to End Tenancy for Landlords' Use of Property be cancelled? If not, should the landlord be granted an order of possession?

Background and Evidence

The male landlord AW gave the following testimony. The tenancy began on May 1, 2014. On July 31, 2020 the landlord issued a Two Month Notice to End Tenancy for Landlords' Use of Property 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 testified that his present home had a flood approximately two months ago. That flood has caused significant mold issues in the home and will require it to be empty to conduct repairs. The landlord testified that along with the mold issue, the home has significant plumbing issues that will also require a prolonged period of non-occupation. The landlord testified that he will immediately move some items into the subject unit if granted an order of possession, and will move in shortly thereafter with his wife. The landlord testified that he requires the subject unit until all repairs are done on his personal residence which will be for at least 6 months.

The tenant gave the following testimony. The tenant testified that he received the notice to end tenancy on August 1, 2020. The tenant testified that he feels the notice is unfair and not given in good faith as he was promised by SW that this would be his “forever home”. The tenant testified that he is on disability and that SW was a “mentor” to him for the past 13 years. The tenant testified that he would like to stay for another two years.

Analysis

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 tenant’s claim and my findings around each are set out below.

The tenant has called into question whether the landlord has issued the notice in good faith. Residential Tenancy Policy Guideline 2 addresses the “good faith requirement” as follows.

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 might be documented through:

*a Notice to End Tenancy at another rental unit;
an agreement for sale and the purchaser’s written request for the seller to issue a Notice to End Tenancy; or
a local government document allowing a change to the rental unit (e.g., building permit) and a contract for the work.*

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.

It is worth noting that the tenant didn't dispute that the landlord was going to move but focused his argument specifically on the lack of fairness to end his long tenure as a tenant. The landlord gave clear concise and credible testimony. He provided details as to the logistical and financial benefits for him to move in and how the mold, water leaks, and plumbing issues at his present home requires the need to relocate. Based on the above, and on a balance of probabilities, I find that the landlord has issued the notice in good faith. As a result, the landlord is entitled to an order of possession pursuant to Section 55 of the Act. The tenancy is terminated.

The Notice remains in full effect and force. The tenant testified that he received the notice on August 1, 2020. The landlord did not provide sufficient evidence to show that the tenant was served on July 31, 2020 as he alleges, accordingly; as per section 53(2) of the Act, the effective date "autocorrects", and the order of possession takes effect at 1:00 p.m. on October 31, 2020.

Conclusion

The tenancy is terminated. The landlord is granted an order of possession.

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: September 17, 2020

Residential Tenancy Branch