



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **LL: OPL, MNDCL, MNRL, FFL**
 TT: OLC, FFT, CNC, CNL, MNDCT

Introduction

This hearing dealt with applications from both the landlord and tenant pursuant to the *Residential Tenancy Act* (the “Act”).

The landlord applied for:

- An order of possession for cause pursuant to section 55;
- An order of possession for landlord’s use of property pursuant to section 55;
- A monetary award for damages and loss pursuant to section 67; and
- Authorization to recover the filing fee from the tenant pursuant to section 72.

The tenant applied for:

- An order that the landlord comply with the Act, regulations or tenancy agreement pursuant to section 62;
- Authorization to recover the filing fee from the landlord pursuant to section 72;
- Cancellation of a 1 Month Notice to End Tenancy for Cause pursuant to section 47;
- 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 landlord was represented by counsel.

As both parties were present service was confirmed. The parties each testified that they were served with all of the materials. Based on the testimonies I find each party

was duly served with the respective materials in accordance with sections 88 and 89 of the *Act*.

At the outset of the hearing the landlord withdrew all notice to end tenancy but for a 2 Month Notice to End Tenancy for Landlord's use dated August 10, 2020. The portions of the respective applications pertaining to 1 Month Notices to End Tenancy for Cause are withdrawn by each party.

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an application must be related to each other and the Arbitrator may dismiss unrelated disputed with or without leave to reapply. In the present case, I find that the portions of both parties' application pertaining to monetary awards and an order that the landlord comply are unrelated to the issue of the 2 Month Notice to End Tenancy. Therefore, I sever and dismiss the portions of the tenant's application seeking a monetary award and order that the landlord comply and dismiss the portion of the landlord's application seeking a monetary award with leave to reapply.

Residential Tenancy Policy Rule of Procedure 3.7 provides that evidence submitted by a party must be organized, clear and legible. Both parties submitted a colossal number of individual pieces of evidence in a haphazard and poorly organized manner. The parties filed over 600 individual files in a variety of file formats instead of a single organized document with numbered pages, The file names are inconsistent and unclear as to their contents so that it is confounding for the reader. Files are uploaded non-sequentially in no discernable order so that locating individual pieces of evidence is difficult and time consuming. Files are uploaded in a variety of formats requiring multiple computer programs to access and view. While I have not excluded any of the documentary evidence of either party, I find that the poor presentation detrimentally affects the strength of submissions and the parties are advised to submit all evidence in a single numbered pdf file containing only relevant materials.

Issue(s) to be Decided

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

Is either party entitled to recover the filing fee for their application from the other?

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 on February 15, 2020. Monthly rent is \$2,500.00 payable on the first of each month. A security deposit of \$1,250.00 and pet damage deposit of \$1,250.00 were collected at the start of the tenancy and are still held by the landlord. The rental unit is a detached building with the landlord residing on a separate building on the property.

There was a previous hearing under the file number on the first page of this decision on August 7, 2020. That hearing pertained to the landlord's application seeking an early end of the tenancy and an order of possession. That application was dismissed in a decision issued on that date.

Subsequently, the landlord issued two 1 Month Notices to End Tenancy for Cause on August 7, 2020, a third 1 Month Notice to End Tenancy for Cause and a 2 Month Notice to End Tenancy for Landlord's use on August 8, 2020, a fourth 1 Month Notice to End Tenancy for Cause and a second 2 Month Notice to End Tenancy for Landlord's Use on August 10, 2020. The landlord submits that all but the second 2 Month Notice to End Tenancy for Landlord's Use dated August 10, 2020 (the "2 Month Notice") were issued in error and subsequently withdrawn.

While the bulk of the landlord's documentary evidence and written submissions for their application pertain to the ongoing conflict with the tenant, they testified that there is no ulterior motive for the issuance of the 2 Month Notice. The parties also gave evidence that the tenant has failed to pay any amount of rent since August 2020.

The landlord submits that their elderly mother, who currently resides in a different municipality, intends to move back onto the property and occupy the building currently used by the landlord. The landlord then intends to occupy the rental unit. The landlord testified that they began contemplating having their mother return to the property in or about March, 2020.

The landlord called their mother as a witness who testified that while they moved off of the rental property for a time due to personality clashes with the landlord, they are unable to economically maintain their residence off of the rental property and intend to

move back and reside in the landlord's suite with the landlord relocating to the rental suite.

The tenant gave evidence regarding their ongoing conflicts with the landlord, the landlord's complaints about the tenant's behaviour, and the fact that both they and the landlord have made multiple video recordings of one another. The tenant submits that they have been served with multiple baseless notices to end tenancy and believe that the present 2 Month Notice is another in a series of unfounded attempts to end the tenancy by the landlord.

Analysis

When a tenant applies to dispute a notice to end tenancy issued pursuant to section 49 of the Act within 15 days of service, the onus shifts to the landlord to show on a balance of probabilities the reasons for 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 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 tenant has raised the good faith intention of the landlord which I find has some basis. Based on the evidence and the timeline of events, I find there is sufficient questions regarding the landlord's motivation. I find the issuance of multiple Notices to End Tenancy for a variety of reasons, and the timing of these notices raises obvious doubt about the motivation for the present notice. The landlord attempted to obtain an Order of Possession through an earlier expedited hearing. In that earlier decision the arbitrator notes that the landlord testified that "The tenant is a threat to the landlord's falcons, work and livelihood." Much of the documentary evidence submitted in support of the present application pertains to the landlord's complaints about the tenant's behaviour.

The landlord issued their first 2 Month Notice on August 8, 2020, a day after their earlier hearing which was dismissed. I find the timing of the issuance of the 2 Month Notice, on the heels of a previous attempt to end the tenancy for other reasons, to put the good faith intention of the landlord in serious doubt. If the landlord's intention was to end the tenancy to allow their family member to return to the property it would be reasonable to expect that some mention would have been made of their plans previously. Instead, the sequence of events shows that the landlord first issued a Notice to End Tenancy for Landlord's Use only after their earlier attempt to end the tenancy failed.

I find the landlord's testimony that the present 2 Month Notice was issued without ulterior motives or another purpose to be unbelievable given the circumstances. I do not find the landlord's submission that the multiple notices were issued in confusion or in error to have an air of reality. The landlord issued multiple 1 Month Notices to End Tenancy for Cause and collected and submitted hundreds of pieces of evidence detailing their complaints and grievances about the tenant's conduct. I find it plainly evident that the landlord's primary concern was with the tenant's actions. I find the landlord's behaviour, taken as a whole, gives rise to sufficient questions about their intention to find that there may be other motivations for issuing the 2 Month Notice.

I find on a balance of probabilities that there is sufficient doubt regarding the intention and motivation of the landlord. Therefore, the 2 Month Notice is cancelled. The tenancy will continue until it is ended in accordance with the *Act*.

As the tenant was successful in their application I issue a monetary award in the amount of \$100.00 allowing them to recover the filing fee for their application. As this tenancy is continuing I allow the tenant to satisfy this monetary award by making a one-time deduction of that amount from their next scheduled rent payment.

Conclusion

The portion of the applications pertaining to a 1 Month Notice to End Tenancy are withdrawn and dismissed without leave to reapply.

The portions of the applications pertaining to a monetary award and order that the landlord comply are dismissed with leave to reapply.

The tenant's application to dispute the 2 Month Notice is successful, the 2 Month Notice of August 10, 2020 is cancelled and of no further force or effect.

The tenant is authorized to make a one-time deduction of \$100.00 from their next scheduled rent payment.

The balance of the applications are 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: October 9, 2020

Residential Tenancy Branch