



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, FFT

Introduction

On August 31, 2020, the Tenant applied for a Dispute Resolution proceeding seeking to cancel the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") pursuant to Section 49 of the *Residential Tenancy Act* (the "Act"), seeking an Order for the Landlord to comply pursuant to Section 62 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing. The Landlord attended the hearing as well, with B.Y. attending as his translator and D.N. attending as counsel for the Landlord. All in attendance, except for D.N., provided a solemn affirmation.

The Tenant advised that he served the Landlord the Notice of Hearing and evidence package by email on or around September 4, 2020 and by courier to the Landlord's counsel on or around the same date. D.N. confirmed that these packages were received by the Landlord. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served with the Tenant's Notice of Hearing and evidence package. Furthermore, as service of this evidence complied with the timeframe requirements of Rule 3.14 of the Rules of Procedure, I have accepted this evidence and will consider it when rendering this Decision.

D.N. advised that the Landlord's evidence was served to the Tenant by registered mail on September 18, 2020 and the Tenant confirmed receipt of this package. As service of this evidence complied with the timeframe requirements of Rule 3.15 of the Rules of Procedure, I am satisfied that the Tenant was appropriately served with the Landlord's evidence. This evidence was accepted and considered when rendering this Decision.

All parties acknowledged the evidence submitted and were given an opportunity to be

heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Landlord's Two Month Notice to End Tenancy for Landlord's Use of Property dismissed?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to recover the filing fee?

Background, Evidence, and Analysis

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

All parties agreed that the most current tenancy agreement was signed on May 30, 2013 and was to commence on July 15, 2013 as a fixed term tenancy for three years, ending on July 14, 2016. Rent was currently established at \$2,050.00 per month and was due on the 15th day of each month. A security deposit of \$1,050.00 was also paid.

D.N. advised that the Tenant was served the Notice by hand and by registered mail on August 25, 2020. The reason the Landlord served the Notice is because "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 confirmed that he received the Notice that day and subsequently made his Application to cancel the Notice. The effective end date of the tenancy was noted as November 1, 2020.

D.N. submitted that the Landlord would travel for work; however, due to the COVID 19 pandemic, he could no longer travel. As a result, he has been working in his apartment. He has a cat and a dog, and the apartment is not big enough for him to work there or to house his animals. Consequently, his plan is to renovate the rental unit and move in as it would better suit his needs.

The Landlord advised that he would ordinarily stay in Canada for two or three months of the year, but due to the pandemic, he will be residing in Canada permanently. He originally stated that he adopted the cat and the dog a month ago; however, he then provided contradictory testimony with respect to the timelines that he acquired these animals.

D.N. clarified that the Landlord adopted the cat in May 2020 and adopted the dog in July 2020. No evidence was submitted to corroborate when or if these animals were in fact adopted.

The Landlord stated that another reason he wants to move into the rental unit is because there are more Chinese restaurants nearby and he can be a part of that community. Furthermore, an additional reason he would like to move into the rental unit is because in his apartment, he is required to share a common area with random people. With respect to the pets, he stated that he adopted the cat at the start of the pandemic when he fully settled into the apartment, as part of this “changing lifestyle”. He later saw an ad for a dog and he then adopted it “for no particular reason”. He did not know that this dog would grow so large, nor did he realize that it would fight with the cat.

D.N. submitted that the Landlord accidentally purchased the dog “out of human folly”. She then referenced a quote submitted by a construction company demonstrating the Landlord’s plans to renovate the rental unit to be pet friendly, and to install a home office. This work is scheduled to start once the Tenant vacates the rental unit.

The Landlord advised that he purchased the rental unit over ten years ago. With respect to the quote for renovations, he anticipated that this work would take approximately 45 days to complete and he would move in once done. As part of this renovation, the flooring needs to be replaced to make the rental unit pet friendly and it needs to be re-painted. He stated that the whole rental unit will not be renovated and the work that has been scheduled does not require permits.

Given the length of time for these renovations to take place, the Landlord would not likely be able to move into the rental unit until early 2021. He could not provide any explanation of what his plan was to deal with his pets fighting, until then. He also again provided contradictory testimony of when he adopted the dog and how old it was.

D.N. advised that the Landlord will move into the rental unit when the Tenant gives up vacant possession, but the contractor wants the rental unit vacant to conduct the required updates. This work will take approximately 30 – 45 days to complete. As there is a concern that his pets would be running around the rental unit during the construction, he will move once the renovations are complete.

The Tenant advised that the rental unit has been painted before and it is his belief that it is not in need of re-painting. He outlined the history of the tenancy and that he had, at one point, the option to purchase the property as he was looking for a long-term residence. After the most current tenancy agreement was signed, he was advised by the Landlord's agent that a third lease would be signed at some point; however, the Landlord never provided a third lease.

He submitted that the Landlord owns multiple properties and that the Landlord's agent texted him on June 2020 asking for permission for the Landlord to tour the rental unit. He advised that this agent told him that the Landlord has been renovating all his properties. He stated that this agent no longer works for the Landlord.

On June 28, 2020, the Landlord inspected the rental unit and introduced the Tenant to his architects. On August 10, 2020, the Landlord advised the Tenant that he would be contacted by his architects, and on August 25, 2020, the Landlord served the Notice. The Tenant advised that he had already changed the existing carpet to hardwood flooring so the Landlord's quote to install flooring is unnecessary. In addition, he stated that the construction company that the Landlord received a quote from does not have a business licence and is a "ghost company". Furthermore, he stated that the rental unit requires a new roof and needs pest control. He made many other submissions with respect to hardship and needing more time to vacate the rental unit.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 49 of the *Act* outlines the Landlord's right to end a tenancy in respect of a rental unit where the Landlord or a close family member of the Landlord intends in good faith to occupy the rental unit.

Section 52 of the *Act* requires that any notice to end tenancy issued by a Landlord must be signed and dated by the Landlord; give the address of the rental unit; state the effective date of the notice, state the grounds for ending the tenancy; and be in the approved form.

When reviewing the Notice, the effective end date of the tenancy on the Notice was noted as November 1, 2020. As rent was due on the 15th day of each month, and as this Notice was served on August 25, 2020, the effective date on the Notice of November 1, 2020 is incorrect as the Tenant is entitled to two, whole months' notice. Section 53 of the *Act* allows for any incorrect dates to self-correct. As such, I find that the correct effective date of the Notice is November 14, 2020. Apart from this detail, I am satisfied that the Two Month Notice to End Tenancy for Landlord's Use of Property issued by the Landlord on August 25, 2020 complies with the requirements set out in Section 52.

In considering the Landlord's reasons for ending the tenancy, I find it important to note that the burden of proof lies on the Landlord, who issued the Notice, to substantiate that the rental unit will be used for the stated purpose on the Notice. While the Landlord provided testimony with respect to why he requires possession of the rental unit, he submitted little evidence to support his motives. The main reasons he provided were because he needed more space for his home-based office and because he needed more space to accommodate the pets that he adopted.

With respect to the Landlord's submissions about his home-based office, I find that he provided insufficient evidence to indicate the nature of his work, how this work required more space, or why his current living space was inadequate to continue his work from there. More importantly; however, is that D.N. advised that the renovations to the rental unit were to make it more pet friendly and to install a home office. When reviewing the quote provided as documentary evidence, I find it important to note that I am doubtful of the reliability of the Landlord's submissions with respect to him moving into the rental unit for the following reasons. Firstly, the quote from the construction company is dated September 11, 2020, which is more than two weeks after service of the Notice. While this does not necessarily indicate that there were no discussions about renovations prior to serving the Notice, as the Landlord's basis for taking over the rental unit was for more

space and to make it pet friendly, I do not find that the date of this quote would be consistent with the Landlord's testimony or timeline.

Furthermore, the work listed on this quote was to replace wood flooring and to paint only. While this does not necessarily mean that the Landlord could not create a home office by himself, I find that this adds further doubt in my mind about credibility of the Landlord's submissions.

Moreover, this quote lists painting as a substantial cost to this renovation and is significantly higher than that of the replacement of wood flooring. While it is conceivable that painting could be a costly undertaking, I do not find that it would generally be consistent with logic or common sense that painting would far exceed the cost of replacing wood flooring. The nature of the wood flooring replacement and the nature of the painting was not elaborated on by the Landlord, other than his explanation that he has painted many properties and it is costly. Given my aforementioned doubts about the legitimacy of this quote, I find that this also causes me to further question the reliability of these submissions.

With respect to the Landlord's reasoning that he needs to move into the rental unit because he adopted a cat and a dog and he needs the extra space for them to live peacefully, I find it important to note that the Landlord provided contradictory and inconsistent testimony about when or why he acquired these pets. While it is not beyond the realm of possibility that he did adopt these animals and that he did not anticipate the difficulties of having these pets in his apartment, he has provided insufficient evidence to corroborate that he did adopt these pets or that he has had these difficulties. As this was the other main reason that he wanted to move into the rental unit, and as it would have been fairly easy to submit evidence to corroborate this reason, it is not clear to me why no documentary evidence was provided to support this position.

When reviewing the totality of the evidence before me, the Landlord's sole piece of documentary evidence was a copy of a quote for renovations that is not entirely compelling, in my view. Overall, I found the submissions that the Landlord provided to be somewhat vague, overly general, inconsistent, and not entirely persuasive. Combined with the scant documentary evidence submitted by the Landlord, I am not satisfied that this one piece of evidence substantially increases the weight of his arguments supporting that he intends to occupy the rental unit.

Ultimately, while it may be the Landlord's intention to occupy the rental unit, based on the lack of persuasive evidence and the Landlord's unconvincing testimony, I am not satisfied, on a balance of probabilities, that the Landlord has established cogent grounds to justify service of the Notice. Therefore, I find that the Notice of August 25, 2020 is cancelled and of no force and effect.

As the Tenant was successful in this Application, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this Application. Under the offsetting provisions of Section 72 of the *Act*, I allow the Tenant to withhold this amount from the next month's rent.

Conclusion

Based on the above, I hereby order that the Two Month Notice to End Tenancy for Landlord's Use of Property of August 25, 2020 to be cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

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 14, 2020

Residential Tenancy Branch