



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL FFT

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 ("2 Month Notice"), pursuant to section 49; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

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

The landlord confirmed receipt of the tenant's application for dispute resolution ('application'). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenant's application. As both parties confirmed receipt of each other's evidentiary materials, I find that these documents were duly served in accordance with section 88 of the *Act*.

As the tenant confirmed receipt of the 2 Month Notice dated December 28, 2020, I find that this document was duly served to the tenant in accordance with section 88 of the *Act*.

Issues(s) to be Decided

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

Is the tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on March 1, 2015, with monthly rent currently set at \$880.31, payable on the first of the month. The landlord collected a security deposit in the amount of \$400.00, which they still hold. The tenant still resides in the home.

The landlord issued the 2 Month Notice dated December 28, 2020, with an effective move-out date of February 28, 2021 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 provided the following background for why they had decided to issue the 2 Month Notice. The landlord testified that his mother would be moving into the basement suite of the duplex where the tenant currently resides. The landlord provided a statement from his mother in his evidentiary materials confirming that she would be moving in. The mother cited two main reasons for moving in: to help with childcare of the landlord's 5 year old daughter, and to move away from her current residence, which is located in a separate living area from the landlord's father with whom the landlord's mother does not have a good relationship with. The landlord testified that his mother's mental health has deteriorated because of the pandemic, and the move would help with her loneliness. The landlord provided his own statement in his evidentiary materials and provided sworn testimony in the hearing.

In the statement, the landlord states that they had asked his mother to move into their suite to assist with the care of their daughter. The landlord's wife is currently teaching and is also enrolled in studies that occupy much of her time when not at work. The landlord testified that there were multiple reasons for why this move would make sense, as family members had lived in the duplex next door, but they have since moved after selling the duplex. The landlord is a realtor, and testified that his work obligations make it difficult for him to ensure that he is around the area at a specific time and location to tend to his daughter. The landlord wrote that the move would enable him to "have more flexibility to schedule meetings throughout the day and it would provide more work time for my wife's coursework". The landlord states that he is uncomfortable about using outside childcare due to the pandemic.

The tenant is disputing the 2 Month Notice as she does not believe that the landlord issued the 2 Month Notice in good faith. The tenant testified that the landlord had made one unsuccessful attempt at the tenancy in 2016, and the 2 Month Notice was cancelled after a hearing was held. Both parties had another hearing in November of 2019. Although the landlord acknowledged that there were past issues between the tenants, the landlord testified that this had no bearing on their decision to end the tenancy. The tenant provided a statement in their evidentiary package questioning the landlord's reasoning and intentions. The tenant testified that the landlord's explanations do not make sense. The tenant questioned whether the landlord's employment was truly a hindrance to childcare considering the flexibility the landlord had. The tenant also questioned why the landlord's mother did not consider other alternatives, rather than moving into the tenant's suite displacing her. In cross examination, the tenant's advocate confirmed with the landlord that the landlord's mother resides about 10 minutes away. The landlord denied that the family owned the other properties listed by the advocate in the hearing. The advocate also questioned the credibility of the landlord's and mother's statements, and noted that the landlord did not call his mother as a witness in the hearing to be cross-examined.

Analysis

Subsection 49(3) of the *Act* sets out that a landlord may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Residential Tenancy Policy Guideline 2: Good Faith Requirement When Ending a Tenancy states:

"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 that they do not have an ulterior motive for ending the tenancy."

Although the landlord stated that they had issued the 2 Month Notice in order for the landlord's mother to move in, I find that the tenant had raised doubt as to the true intent of the landlord in issuing the 2 Month Notice. The burden, therefore, shifts to the landlord to establish that they do not have any other purpose to ending this tenancy.

Although the landlord provided several reasons for why they were ending this tenancy in order for the landlord's mother to move in, I find that the explanations provided by the landlord raised considerable doubt as to the credibility of these statements. The landlord cited childcare as a reason for why they requested that the landlord's mother move in, but it was confirmed in the hearing that the landlord's mother resides within close proximity of the landlord. Although the landlord did highlight the fact that the mother does not have a good relationship with the landlord's father, the mother currently resides in a separate part of the home. Furthermore, I find the landlord cited work disruption as one of the reasons for why the landlord requires help with childcare, but I do not find this testimony to be supported in evidence. In fact, I find that it is more likely that an unstructured schedule affords more flexibility than a structured one. Combined with the fact that the landlord's mother currently resides nearby, I do not find the landlord's explanation about childcare to be credible nor convincing. These reasons alone raise considerable doubt as to the landlord's true intentions for ending this tenancy. Combined with the fact that the landlord has a strained relationship with the tenant, I find that the landlord has not met the burden of proof to establish that they do not have any other purpose in ending this tenancy.

As noted earlier, the onus is on the landlord and not on the tenant to establish whether or not the 2 Month Notice was issued in good faith. I find that the landlord has not met their burden of proof to show that the 2 Month Notice was issued in good faith. I find that the testimony of both parties during the hearing as well as the evidence presented raised questions about the landlord's true intentions in ending this tenancy, and the evidence and statements do not sufficiently satisfy me that the true reason for ending this tenancy is for the mother to move in.

Accordingly, I allow the tenant's application to cancel the 2 Month Notice. The landlord's 2 Month Notice, dated December 28, 2020, is hereby cancelled and is of no force and effect. This tenancy is to continue until it is ended in accordance with the *Act*.

I allow the tenant to recover the filing fee for this application.

Conclusion

The tenant's application to cancel the landlord's 2 Month Notice is allowed. The Landlord's 2 Month Notice, dated December 28, 2020, is cancelled and is of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

I issue a \$100.00 Monetary Order in favour of the tenant for recovery of the filing fee. I allow the tenant to implement the above monetary award by reducing future monthly rent payments until the amount is recovered in full.

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 12, 2021

Residential Tenancy Branch