



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenants: CNC, FFT
For the landlord: OPC, FFL

Introduction

The tenant filed an Application for Dispute Resolution (the “tenant’s Application”) on February 6, 2021 seeking an order to cancel the Two Month Notice to End Tenancy for the landlord’s Use of Property (the “Two-Month Notice”). They also applied for reimbursement of the Application filing fee.

The landlords (hereinafter the “landlord”) filed a cross-Application for Dispute Resolution (the “cross-Application”) on February 19, 2021 seeking an order of possession of the rental unit. This is following their service of the Two-Month Notice to the tenant on January 24, 2021. Additionally, they applied for reimbursement of the cross-Application filing fee.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on April 15, 2021. Both parties attended the hearing, and I provided each party the opportunity to present oral testimony and make submissions during the hearing. In the conference call hearing I explained the process and offered each party the opportunity to ask questions.

Preliminary Matter

At the outset of the hearing, both parties confirmed they received the prepared documentary evidence of the other.

When reviewing disclosure of evidence to both parties, the tenant noted they received evidence from the landlord here 5 days prior to the hearing date. This was on April 9th when they received certain pieces of the landlord's evidence. In their response to this, the landlord referred to guidance they received from the Residential Tenancy Branch that provided service of documents in person was acceptable.

To address this issue, I note this is a situation regarding an end of tenancy. The landlord's cross-Application here is focused on the same issue, and in matters concerning an end of tenancy, the onus is on the landlord to prove why their desire to end the tenancy is legitimate, and why the document they issued to facilitate the end of tenancy is valid. I find the situation here is more in line with the landlord *responding* to the tenant's Application to cancel, rather than filing an entirely original and separate claim.

The Residential Tenancy Branch relies on a comprehensive set of rules outlined in the *Residential Tenancy Branch Rules of Procedure*. Rule 3.15 sets a respondent's evidence timeline at "not less than seven days before the hearing." Rule 3.3, governing cross-applications, sets the timeline for evidence in support of the application at "not less than 14 days before the hearing."

In this situation I find Rule 3.15 governs. Here, the tenant received the landlord's evidence 6 days prior, despite the seven-day rule. Strictly speaking this does not meet the seven-day rule set out in Rule 3.15; however, Rule 3.17 gives the arbitrator discretion to determine whether to accept evidence.

On my examination of the later-submitted evidence from the landlord, its inclusion does not unreasonably prejudice the tenant. Also, its inclusion does not breach the principles of natural justice. I make this finding for two reasons: the tenant did not present that they did not have the opportunity to review the evidence prior to the hearing; and the pieces are not a large-sized package of documents here. Therefore, I afford the landlord's submitted evidence appropriate consideration in this hearing.

Issue(s) to be Decided

Is the tenant entitled to an order that the landlord cancel or withdraw the Two-Month Notice?

If the tenant is unsuccessful in their Application, is the landlord entitled to an Order of Possession of the rental unit, pursuant to s. 55 of the *Act*?

Is the tenant entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Is the landlord entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

Background and Evidence

Both parties provided a copy of the tenancy agreement in their evidence. This shows the start of tenancy on November 1, 2003, with the monthly rent at \$500 per month. As at the time of the hearing, the tenant paid \$600 per month. Both parties confirmed that the tenant paid rent right up until the current calendar month at the time of the hearing.

The landlord provided a document entitled 'Proof of Service', showing the service date of the Two-Month Notice on January 24. The landlord hand-delivered the copy and the witness who observed the service attested to this by way of their signature on the second page. The tenant confirmed that the landlord carried out service in this manner.

Both parties also provided a copy of the Two-Month Notice, issued by the landlord on January 24, 2021. This gives the move-out date of March 31, 2021. The second page of the document set out the reason that the landlord desires to end the tenancy; this was for their own occupancy of the rental unit. Specifically, this was for the use of "the child of the landlord or the landlord's spouse." The child of the landlord was the party in attendance for the landlord in the hearing.

In the landlord's cross-Application, they provided the following:

Landlord's spouse is have major abdominal surgery. Do [*sic*] to health issues and covid restrictions, my mother will need the space for her recovery. Prior to her surgery, the unit must be thoroughly cleaned, thus the reason for the 2 month notice. I will be staying with her to aid in her recovery.

The landlord provided detail on the family's need for the rental unit in the hearing. This involves their parent's upcoming surgery – this is the spouse of the named landlord. The landlord present in the hearing (who is the landlord's daughter) more recently had

surgery of their own, and then parent had been observing their post-surgery recovery and management because they had opted to have that same surgery. A consultation with a surgeon specific to this process was coming up in February, with the surgery date scheduled for mid-April. For this reason, the landlord decided on the January 24 service to the tenant, giving that March 28 end-of-tenancy date.

Another element to this is that parent's need for overall easier access in the home, with easier access to the yard from this lower-level basement rental unit.

The landlord maintained that they accidentally checked the wrong indication on the document – truthfully speaking, the use of the unit is for their parent who will be undergoing the surgery.

For evidence, the landlord who attended the hearing provided references to their own recent surgical procedure and their recent return to work. Specifically, this is abdominal surgery. They also included a document showing the doctor's proposal for their mother's surgical procedure, dated February 12, 2021, and a separate document showing consent for the procedure and the cost thereof.

The tenant presented that they felt the landlord was imposing miscellaneous new rules, more recently in 2020 after a long-term tenancy. This involved recent issues of increasing utility bills, the possibility of an increase in rent, and parking. They had the indication that a notice to end tenancy was coming in December 2020, and they felt this was a surety after a heated discussion on December 18th. The tone of the communication with the landlord went from 'well maybe you shouldn't live here' from the landlord, through to the tenant asking if a notice to end tenancy was coming, with the response being 'if you want one I can give that to you.'

The tenant described these conversations to say they had some idea that a end-of-tenancy form was coming; instead, they were surprised when the landlord delivered the Two-Month Notice for the reason of the landlord's use of the rental unit. They submit the recent conversations are revealing of some ulterior motives of the landlord.

The tenant submits their feelings on this were confirmed with the Two-Month Notice indicating the landlord's *child* needs the unit. The tenant recalls the landlord's daughter stating that they need the unit on their own for use of an office; however, the tenant knows this person has their own home and office. They posed the question in the hearing: if the landlord is now indicating this information was wrong and the incorrect

piece was indicated on the document, then why was there not a corrected new Two-Month Notice issued?

In their evidence, the tenant presented a title search to show the landlord's daughter has their own home. Additionally, they submitted material that gives guidelines and instructions on physical activity challenges that may present themselves after abdominal surgery.

In response to what the tenant presented in the hearing, the landlord reiterated that they issued the Two-Month Notice for the issue related to the medical issue. They presented that they did not pursue the feasibility of a possible rent increase.

Analysis

When a landlord issues a Two-Month Notice and the tenant files an application to dispute the matter, the landlord bears the burden of proving they have grounds to end the tenancy and must provide sufficient evidence to prove the reason for ending the tenancy. Additionally, the landlord bears the burden of showing they are acting in good faith.

In this case, the landlord issued the Two-Month Notice pursuant to s. 49(3), and I accept the tenant's evidence that they received this document on January 24, 2021. As the tenant's Application was filed on February 6, 2021, I find that they disputed the Two-Month Notice within the timeframe required under the *Act*.

The *Act*, s. 49(3), requiring a Two-Month Notice, stipulates:

(3)A landlord who is an individual 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.

The landlord in the hearing reiterated the need for the rental unit. I find their direct points on this are twofold. For one, the landlord's daughter must assist their mother who would undergo surgery approximately 3 months after they issued the Two-Month Notice. This involves the mother's own close monitoring of the daughter to observe how they coped with the same surgical procedure. Secondly, the mother post-surgery needs this unit for easier access and mobility entering and exiting, as well as a separate space to isolate for public health concerns.

There is no question on the veracity of the landlord's claim of their parent's upcoming surgery. On the need for the parent to monitor the daughter's post-surgery progress, I am not satisfied this requires the family's need of the rental unit. There is no proof that adequate space is not otherwise available to the landlord for this purpose. The landlord's evidence is not clear whether this means the daughter will occupy the unit.

Similarly, I am not satisfied of the need for easier access and mobility – the landlord did not provide sufficient evidence to show their parent's home access proves to be particularly challenging. Also, there is nothing in regard to possibly exacerbated pre-existing conditions that may add to any burden the surgery may create. I find the landlord's submissions on this to be more abstract.

While the landlord's daughter in the hearing mentioned the need for the unit in relation to a public health matter – i.e., a pandemic – these concerns were not provided with adequate detail with respect to the need for the unit.

While the tenant has raised a few concerns based on tension and communication on separate issues coming to the fore, what is more concerning is the messaging from the landlord. The landlord stated the reason indicated on the Two-Month Notice – that is, the child of the landlord's need – is not in fact the case; however, I find the tenant is credible on the point that the landlord's daughter phrased the issue of eviction to the tenant in exactly this term.

While the tenant's concerns are not borne out through actual actions by the landlord, I find the landlord's non-specificity on their need for the unit lends credence to the tenant's concern that the landlord issued the Two-Month Notice for other reasons.

In sum, the landlord was not specific enough on their need for the rental unit. I find it more likely than not that the need based on a surgery is a pretext. Recovery from a surgery is more short-term, and beyond that the landlord did not establish a more long-term focus to share their designs on who would occupy the unit. With this consideration, the long-term tenancy here factors in as well. I find the tenant has clearly established that this is their home and has been for quite some time. I give this fact more weight than the landlord's need for the unit, focused only on surgery with no evidence of needed long-term care.

The landlord did not provide sufficient evidence to show a valid reason for issuing the Two-Month Notice. For this reason, the Two-Month Notice is cancelled, and the tenancy will continue.

The landlord was not successful in the cross-Application; therefore, they are not entitled to recovery of the filing fee.

As the tenant was successful in this application, I find the tenant is entitled to recover the \$100.00 filing fee paid for this application. I authorize the Tenant to withhold the amount of \$100.00 from one future rent payment.

Conclusion

For the reasons above, I order the Two-Month Notice issued on January 24, 2021 is cancelled and the tenancy remains in full force and effect.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: April 23, 2021

Residential Tenancy Branch