



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, FFT

Introduction

The tenants filed an Application for Dispute Resolution on January 31, 2021 seeking an order to cancel the 'Two Month Notice to End Tenancy for Landlord's Use' (the "Two-Month Notice"). They also seek the landlord's compliance with the legislation and/or the tenancy agreement and recovery of the 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 29, 2021.

In the conference call hearing I explained the process and offered the attending party the opportunity to ask questions. The tenants attended the hearing, and they were provided the opportunity to present oral testimony and make submissions during the hearing. The landlord did not attend the telephone conference call hearing.

To proceed with this hearing, I must be satisfied that the tenants made reasonable attempts to serve the landlord with the Notice of Dispute Resolution for this hearing. This means the tenants must provide proof that the document was served using a method allowed under section 89 of the *Act*, and I must accept that evidence.

They set out how they served this notice to the landlord via registered mail on February 7, 2021. They provided a copy of the post office receipt to show this along with tracking information. This included their early prepared evidence. Again, on March 1 the tenant a second package of evidence via registered mail. The tenant provided the landlord's address in the hearing, and by cross-referencing it to other documentation in their materials, proved that it was the correct address provided to them by the landlord.

Based on the submissions of the tenant, I accept they served the notice and evidence for this hearing in a manner complying with section 89(1)(c) of the *Act*. The hearing thus proceeded in the landlord's absence.

Issue(s) to be Decided

Is the tenant entitled to an order that the landlord cancel the Two-Month Notice pursuant to section 49 of the *Act*?

If unsuccessful in this Application, is the landlord entitled to an Order of Possession of the rental unit pursuant to section 55 of the *Act*?

Is the tenant entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

The tenants provided a copy of the residential tenancy agreement that has been renewed with successive landlords since 2005. The current rent amount is \$1,294.

The landlord issued this Two-Month Notice on January 19, 2021, for the effective end-of-tenancy date of March 31, 2021. The landlord indicated on page 2 of the document that "the conditions for the sale . . . have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit."

The tenants, after affirming an Oath as to their testimony at the start of the hearing, gave the following statements:

- even before the landlord issued and served the Two-Month Notice, in mid-December they told the tenants that the landlord will demolish the unit
- the landlord at that time stated the notice to end tenancy would be a four-month notice to end tenancy
- when they issued the Two-Month Notice to the tenants on January 19, they stated "it will be demolished" – to this, the tenants responded that the landlord must issue a 4-month Notice; however the landlord responded to say "no no he's still going to be living there"

- the landlord subsequently provided a copy of the addendum to the purchase/sale contract; however, this indicates only that the purchaser wishes for the tenants to vacate, and does not specify whether it is for occupancy or demolition of the rental unit
- after this, toward the end of February the municipality came to review the water set-up for a new home – the tenants had no notice of this and the municipal workers who attended informed them that ‘the landlord must give you notice of this’
- the municipality again visited the rental unit in March, asking the tenants to move their vehicles so that they could commence an inspection of the sewage system
- They provided a copy of the work order (appearing in the landlord’s evidence, noting an installation of a new sanitary system at the property) and told the tenants that such an order is issued only when a property structure will be demolished;
- by the beginning of April, the municipality commenced work on the sewage system – the tenant provided photos that show this work in their evidence.

In the hearing, the tenants reiterated that such work as it proceeded was only in line with demolition of the rental unit. To date, they had no information about the new purchaser moving into the rental unit.

The tenants also raised the point that each tenant in this four-plex property received the same reason on a Two-Month Notice: that the landlord intended to occupy the rental unit. Their question is: why would the purchaser want the same notice to each individual unit? Which one will they occupy?

The tenants also presented how the landlord has not maintained the rental unit in a suitable living condition. They presented a receipt in the amount of \$152.25 to show they paid for furnace repair. This is dated March 16, 2021. In the hearing they described broadly how the landlord does not keep the unit safe, clean or warm. There is a problem with garbage disposal, and this attracts pests that they are having to deal with constantly. For this, the tenants ask for an order that the landlord comply with the *Act* and the tenancy agreement that is in place.

The landlord did not attend the hearing and did not provide any documentation for consideration as evidence.

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 to end the tenancy.

In this case, the Two-Month Notice was issued pursuant to s. 49(5), and I accept the tenants' evidence that they received this document on January 19, 2021. As the their application was filed on January 31, 2021, I find that they have disputed the Notice within the timeframe required under the *Act*.

The *Act* s. 49(5), requiring a Two-Month Notice, stipulates:

- (5)A landlord may end a tenancy in respect of a rental unit if
 - (a)the landlord enters into an agreement in good faith to sell the rental unit,
 - (b)all the conditions on which the sale depends have been satisfied, and
 - (c)the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
 - (i)the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;
 - (ii)the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

Following this, s. 49(6) requiring a Four-Month Notice, stipulates among other things:

- (6)A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:
 - (a)demolish the rental unit;

Based on what the tenants present here, I find on a balance of probabilities that the Two-Month Notice is issued in error and does not reflect the true nature of the purchaser's intentions. I find the evidence shows the rental unit property is being prepared for a demolition.

Primarily, the tenants provided affirmed testimony under oath about the conversations they had with the landlord. The landlord stated the rental unit was going to be demolished. Minus any evidence to the contrary, I find this is the information given

verbally to the tenants before the issuance of the Two-Month Notice. Upon issuance of the Two-Month Notice, the landlord made this same statement to the tenants directly. When challenged, the landlord reversed and said the landlord would be living there.

Secondly, I give weight to what the tenants present on their interactions with the municipality. These are documents showing a new sanitary system that only comes with construction that follows a demolition. Upon questioning the municipality, the tenants were told that a demolition was imminent based on the work currently being performed. Minus any evidence to the contrary, I find the municipality confirms what the landlord initially stated as the reason for ending the tenancy.

Finally, there is vague and uncertain information about the purchaser's intent to occupy the rental unit. This is not explicit in the instructions to the landlord from the purchaser. I find it more likely than not that the landlord on their own was not certain of the use of the rental unit after purchase. I find as fact that other surrounding tenants were given a similar notice for the purchaser's intent to occupy – that is three other units, and this information further blurs the purchaser's intentions.

For these reasons, I am not satisfied that the purchaser intends in good faith to use the rental unit as a living accommodation. The tenants here presented here what they feel strongly indicates otherwise, and I accept their evidence and testimony to find that the reason indicated on the Two-Month Notice is incorrect. Moreover, there is no evidence from the landlord to show that the document is valid, and here they bear the burden of proving that it is so. That invalidates the Two-Month Notice and I so order it is cancelled. The tenancy will continue.

The tenants presented evidence on the need for a furnace repair and mentioned the situation with garbage disposal that is causing pest problems. The tenants provided a few photos that show problematic disposal areas. Though I am not satisfied of the need for furnace repair, I do note for the landlord's benefit that s. 32 of the *Act* provides that a landlord has the obligation to repair and maintain the rental unit. This requires close communication with the tenants on any deficiencies, irregularities or problems. The relevant parts of s. 32 read as follows:

- (1) A landlord must provide and maintain residential property in a state of decoration and repair that
 - a. complies with the health, safety and housing standards required by law, and

- b. having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

With the tenancy continuing, so do the tenants' rights. In line with this, by s. 62(3) I so order that the landlord shall comply with the standards set forth in the *Act* s. 32. The tenants are encouraged to make all of their concerns known to the landlord in writing. The tenants continue to have the dispute resolution process to resolve any difficulties, should they continue in this tenancy.

Conclusion

For the reasons above, I order the Two-Month Notice issued on January 19, 2021 is cancelled and the tenancy remains in full force and effect.

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.

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 29, 2021

Residential Tenancy Branch