



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL OLC 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;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; 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') and evidence package. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served with the tenant's application and evidence. The landlord did not submit any written evidence for this hearing.

As the tenant confirmed receipt of the 2 Month Notice on January 18, 2021, 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 an order for the landlord to comply with the *Act*?

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 approximately 7 years ago, with monthly rent currently set at \$700.00, payable on the first of the month.

The landlord served the tenant with a 2 Month Notice to End Tenancy For Landlord's Use, dated January 18, 2021, with an effective move-out date of March 19, 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.

On the 2 Month Notice, where the landlord is asked to indicate which close family will occupy the unit, the landlord circled all three options: the landlord or the landlord's spouse, the child of the landlord or landlord's spouse, and the father or mother of the landlord landlord's spouse.

The landlord's son testified in the hearing that his older sister would be moving in with her two year old son as the family needed more room. The son testified that the tenant was given ample notice of this.

The tenant is disputing the 2 Month Notice as the tenant does not believe that the landlord issued the 2 Month Notice in good faith. The tenant testified that the trailer is in need of extensive repairs, and that the landlord is attempting to end the tenancy in an effort to avoid these repairs, or provide the tenant with a newer trailer. The tenant testified that two years ago, the tenant's rent was increased by \$200.00 per month to help the landlord save for a newer trailer. The tenant testified that the landlord has not provided the tenant with a newer trailer, nor has the landlord addressed any the repairs requested. The tenant provided video footage of the home as well as a copy of a written request dated November 4, 2020 listing all the issues and repairs that needed to be done.

The tenant testified that the landlord is avoiding repairs to essential services and facilities. The tenant testified that the repairs are not cosmetic, and pose a threat to the safety of the tenant and tenant's pets. The tenant testified that he is unable to use the

back stairs, or open the door to the deck, and that an electrical fire took place in the trailer. The tenant testified that the landlord has dispatched people to attend who are not professionals, and have failed to address the issues. The tenant testified that the person who attended to look at the door arrived drunk, and left after being barked at by the tenant's dogs. In addition to the repairs, the tenant has requested that the landlord provide the tenant with a filter as the water has a strong odour, and is not drinkable.

The landlord responded that the tenant is full of lies and exaggerations, and that despite having lived in the trailer for 7 years, the tenant has not filed any applications in relation to the issues brought up in the tenant's application. The landlord testified that the tenant's dogs have destroyed the home, and that the tenant is simply bringing up the issues as the tenant has been served with a 2 Month Notice.

The tenant responded that he had been patiently waiting for the landlord to address the issues as promised. The tenant requested an order for the landlord to comply with the *Act*.

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 daughter 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.

The find that the tenant has provided sufficient evidence to demonstrate that the trailer is need of some urgent repairs. I find that the testimony of both parties during the hearing as well as the evidence presented raised questions about the landlord's good faith, and the evidence and testimony submitted by the landlord does not sufficiently satisfy me that the true reason for ending this tenancy is for the landlord's daughter to move in. I find that the landlord has not met their burden of proof to show that the 2 Month Notice was issued in good faith.

Accordingly, I allow the tenant's application to cancel the 2 Month Notice. The landlord's 2 Month Notice, dated January 18, 2021, is hereby cancelled and is of no force and effect. This tenancy is to continue until it is ended in accordance with the *Act*.

The tenant also applied for an order for the landlord to comply with the *Act*. I am satisfied that the tenant has provided sufficient evidence to support that the trailer is in need of urgent repairs. Although the tenant has not filed any previous applications for dispute resolution, the landlord must still fulfill their obligations under sections 32 and 33 of the *Act* as stated below:

Landlord and tenant obligations to repair and maintain

32 (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.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

Section 33 of the *Act* states the following in regards to emergency repairs:

Emergency repairs

33 (1) In this section, "**emergency repairs**" means repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing
 - (i) major leaks in pipes or the roof,
 - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
 - (iii) the primary heating system...
 - (v) the electrical systems....

(3) A tenant may have emergency repairs made only when all of the following conditions are met:

- (a) emergency repairs are needed;
- (b) the tenant has made at least 2 attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs;
- (c) following those attempts, the tenant has given the landlord reasonable time to make the repairs...

(5) A landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant

- (a) claims reimbursement for those amounts from the landlord, and
- (b) gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed.

(6) Subsection (5) does not apply to amounts claimed by a tenant for repairs about which the director, on application, finds that one or more of the following applies:

(a) the tenant made the repairs before one or more of the conditions in subsection (3) were met;

(b) the tenant has not provided the account and receipts for the repairs as required under subsection (5) (b)...

(7) If a landlord does not reimburse a tenant as required under subsection (5), the tenant may deduct the amount from rent or otherwise recover the amount.

I order that the landlord fulfill their requirements under the *Act* and tenancy agreement, including repairs as set out in sections 32 and 33.

The tenant testified that the water in the trailer is not drinkable. In light of the evidence and disputed testimony before me, I am unable to determine whether this is in fact the case. In relation to this issue, I order that the landlord must address the issue if the tenant is able to provide a report from a certified professional that the water does not meet health and safety standards for drinking or daily use.

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 January 18, 2021, 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 a future monthly rent payment until the amount is recovered in full.

I also order that the landlord comply with the *Act*, including fulfilling their obligations to perform repairs.

In relation to this issue with the water in the rental unit, I order that the landlord must address the issue if the tenant is able to provide a report from a certified professional that the water does not meet health and safety standards for drinking or daily use.

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: May 4, 2021

Residential Tenancy Branch