



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL LRE LAT FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (application) by the tenant seeking remedy under the *Residential Tenancy Act* (Act) to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property dated April 20, 2021 (2 Month Notice), for an order to suspend or set conditions on the landlords' right to enter the rental unit, site or property, for authorization to change the locks to the rental unit, and to recover the cost of the filing fee.

The tenant MB (tenant), a witness for the tenant, TC (witness) who was not called to testify during the hearing, and landlord AG (landlord) attended the teleconference hearing. The parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form and make submissions to me. The hearing process was explained to the parties and an opportunity to ask questions was provided to both parties.

The landlord confirmed that they had received and reviewed the tenants' documentary evidence and had the opportunity to review that evidence prior to the hearing. The landlord also confirmed that they did not submit any documentary evidence in response to this application. I find the landlord was sufficiently served as required by the Act. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the

hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

In addition, the parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them.

Rule 2.3 of the RTB Rules authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenant indicated several matters of dispute on the application, the most urgent of which is the application to cancel the 2 Month Notice. I find that not all the claims on the application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenant's request to cancel the 2 Month Notice and for the filing fee at this proceeding. The balance of the tenant's application is dismissed, with leave to re-apply.

Issues to be Decided

- Should the 2 Month Notice be cancelled?
- If yes, is the tenant entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

The tenant testified that they moved into the rental unit in January 2015 and that monthly rent was \$850.00 per month and due on the first day of each month. The tenant stated they always pay their rent early. The tenant testified that monthly rent was increased to \$900.00 in 2020.

The landlord testified that they purchased the home in April 2021 and the tenancy survived the sale of the property. The landlord testified that they approached the tenant and stated they "needed \$1,050.00 out of it" meaning the landlord wanted to increase the monthly rent. The tenant stated they signed a new tenancy agreement with monthly rent being \$1,050.00 and later advised the landlord that she would not be paying the higher rent as she found out later that the landlord could not raise the monthly rent.

The tenant writes in their application that the landlord then issued the 2 Month Notice once the tenant advised they would not be paying the higher monthly rent of \$1,050.00. As a result, the tenant has raised the issue of good faith related to the 2 Month Notice.

The landlord testified that he will be moving into the rental unit. As a result, the landlord was asked where he is currently residing. The landlord affirmed that he was residing in the basement suite of a home he also owns through his electrical company.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

I find the tenant filed their application on time to dispute the 2 Month Notice as the tenant received the 2 Month Notice on April 20, 2021 and disputed the 2 Month Notice two days later on April 22, 2021, which is within the 15-day timeline to dispute the 2 Month Notice.

When a tenant disputes a 2 Month Notice on time, the onus of proof reverts to the landlord to prove that the 2 Month Notice is valid and should be upheld. If the landlord fails to prove the 2 Month Notice is valid, the 2 Month Notice will be cancelled.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. In addition, when a tenant has filed to cancel a 2 Month Notice and call into question the “good faith” requirement, the onus lies on the landlord to prove that the 2 Month Notice was issued with an **honest intention, with no ulterior motive to end the tenancy.**

I have carefully considered all of the evidence and testimony before me and agree with the tenant that the 2 Month Notice was issued with an ulterior motive to end the tenancy and lacked an honest intention. I find the landlord admitted that they “needed \$1,050.00 from the rental unit” and immediately after hearing from the tenant that they were not paying the increased rent, the landlord issued the 2 Month Notice. In addition, as the landlord stated they own the rental home and the home in which they were currently renting, I find the landlord has provided insufficient evidence to support that they need to reside in this particular rental accommodation for financial reasons and that the timing of the 2 Month Notice supports that the landlord had an ulterior motive to issue the 2 Month Notice, which I find is more likely than not to obtain higher rent for the rental unit in the home they purchased **the same month they issued the 2 Month Notice.**

As a result, I afford the testimony of the landlord very little weight as I don't find the landlord is acting without an ulterior motive. Therefore, on the balance of probabilities, I find it more likely than not that the landlord has not issued the 2 Month Notice in good faith due to insufficient evidence and as a result, **I cancel** the 2 Month Notice dated April 20, 2021.

I ORDER the tenancy to continue until ended in accordance with the Act.

As the tenant's application was successful, I grant the tenant a one-time rent reduction in the amount of **\$100.00** in full satisfaction of the recovery of the cost of the filing fee pursuant to section 72 of the Act.

I CAUTION the landlord not to issue any future notices with an ulterior motive.

Conclusion

The tenant's application is successful. The 2 Month Notice is cancelled. The tenancy shall continue until ended in accordance with the Act.

The tenant is granted a one-time rent reduction in the amount of \$100.00 in full satisfaction of the recovery of the cost of the filing fee pursuant to section 72 of the Act.

This decision will be emailed to both parties.

The landlord has been cautioned as noted above.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: June 1, 2021

Residential Tenancy Branch