



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **RP, CNC, LRE, LAT, MNDCT, FFT, CNL**

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants filed under the Residential Tenancy Act (the “Act”), to cancel One Month Notice to End Tenancy for Cause, (the “Notice”) issued on February 25, 2021, to have the landlord make repairs to the rental unit or property, to suspend or set conditions on the landlord’s right to enter the rental unit; to be allowed authorization to change the locks on the rental unit, for monetary compensation for monetary loss or other money owed and to recover the cost of the filing fee.

On April 8, 2021, the tenants filed an amended application to cancel a Two Month Notice to End Tenancy for Landlord’s Use of Property (the “2 Month Notice”), issued on March 26, 2021.

The tenant LM appeared, gave affirmed testimony and their legal counsel was present. The landlord did not attend, and the article student was appearing on the landlord’s behalf.

Both parties were provided the opportunity to present their evidence orally and in written and documentary form and make submissions at the hearing.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice and the 2 Month Notice. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only

consider the tenant's request to set aside the Notice and the 2 Month Notice. The balance of the tenant's application is dismissed, with leave to re-apply.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Should the Notice be cancelled?

Should the 2 Month Notice be cancelled?

Background and Evidence

The tenancy began on December 1, 2019. Rent in the amount of \$750.00 was payable on the last day of each month. The tenants paid a security deposit of \$375.00 and a pet damage deposit of \$375.00.

The Notice

The parties agreed that the Notice was served on the tenants indicating that the tenants are required to vacate the rental unit on March 31, 2021.

There are multiple reasons stated in the Notice. The article student for the landlord stated that they are only proceeding on the following reason.

- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The article student submits that the tenants have been served with multiple written notices that they are in breach of two material terms of the tenancy agreement, which are as follows:

- The tenant shall not make changes or alterations to the premises without written consent of the landlord; and

- Tenant agrees to maintain lawns/yard.

The article student submits the tenants installed a temporary fence and were instructed to have the fence removed. The article student stated the tenants have failed to comply after written notice was given. Filed in evidence is a photograph of the temporary fencing.

The article student submits that the tenants have also failed to maintain the lawn and yard. Filed in evidence is a photograph of the lawn.

Filed in evidence are written letters to the tenants. The final letter dated January 31, 2021, stated the following are outstanding, I have only reproduced the relevant information from the letter, which reads in part the following.

- Due to safety reasons the temporary rented fence to be removed with in 24 hours. Failure to do this will result in getting the fence taken down at your cost. I have taken pictures of this safety hazard
- Maintaining your yard. The rest of the leave have still not been picked up. I have taken pictures in the event that I need to prove these facts. The bags of leaves that you did clean up are not removed. Dog toys are all over the back yard, and a newly added tarp has been put up not to view of your mess or for whatever reason without my permission and needs to be removed immediately.

The tenant testified that they have not removed the temporary fencing because they had the landlord's permission to place the temporary fencing on the property when they agreed to rent the premises. The tenant stated that the fencing was installed the day before they moved into the premises in 2019. The tenant stated they would never had agreed to rent the premises without the fencing as they had dogs.

The tenant testified that in November 2020, they asked the landlord if they could use the leaf blower as the landlord had always provided them with the tools to do maintenance of the yard. The tenant stated that the landlord told them to leave the leaves as it was good for the soil. The tenant stated that it is unreasonable for the landlord to tell them that they are in breach of their tenancy agreement and want the leaves removed within 24 hours. The tenant stated because the landlord then decided they would not provide them with the necessary tools, they had to wait for their next paycheck to be able to purchase their own tools.

The tenant testified that the lawn is being maintained as they have someone coming in every two weeks. The tenant stated the lawn was cut two days after the landlord took the photographs.

Counsel for the tenant submits the fence cannot be a breach of a material term as the tenants had permission to put up the fencing before they moved into the property in 2019.

2 Month Notice

The parties agreed that the 2 Month Notice was served on the tenants indicating that the tenants are required to vacate the rental unit on May 31, 2021. The reason listed in the 2 Month Notice is the following:

- The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

The article student for the landlord submits the 2 Month Notice was issued in good faith. The article student stated that the landlord wants this portion of the property back for business purposes and for their own use, equally. The article student stated there is a door between the two units and it easy for the space to be combined as one.

The article student stated that the landlord wants to expand their herbal business and needs the space for storage of goods, see clients, and make products.

The article student stated that the landlord also wants to be able to use the space for their own use, and to be able to have friends and family stay there.

The article student for the landlord submits that the landlord has provided a copy of their business quarterly report, photograph of their supplied, receipts for supplies and their receipt book.

The article student for the landlord submit their was no need for the landlord to issue the 2 Month Notice as they believe the Notice will end the tenancy for breach of material term; however, the landlord did so for the benefit of the tenants and the landlord knows if they do not comply with the 2 Month Notice they can end up paying the tenants 12 month compensation.

The tenant testified that the landlord did not issue the 2 Month Notice in good faith as they are simply trying, anyway, to end the tenancy. The tenant stated that when they first moved into the premises the landlord stated that at some point they may want the rental unit to expand their daycare. The tenant stated they use to have a really good relationship with the landlord, and never did they ever mention that they wanted to use their premise to expand their herbal business.

The tenant testified that the landlord lives in their own home which is a three bedroom and they can have any family or friends stay in one of those bedrooms. The tenant stated the landlord had told them that they could never afford to leave the premises unrented and even stated that they might rent out their portion of the house and move to the mainland and had asked them to be the property manager if that did occur.

The tenant testified that when they signed their last tenancy agreement the landlord wanted to increase the rent to \$950.00; however, they told the landlord that they cannot afford to pay such an increase and that it was higher than what was allowed under the Act.

Counsel for the tenant submits the 2 Month Notice was not issued in good faith and it makes little sense to issue the 2 Month Notice when the landlord had issued the Notice. Counsel submits that the landlord was just trying to cover all their bases to end the tenancy.

Analysis

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

Residential Tenancy Policy Guideline #8 defines a material term, that the parties both agree is so important that the **most trivial breach of that term gives the other party the right to end the agreement.**

I have considered all of the written and oral submissions submitted at this hearing, I find that the landlord has not provided sufficient evidence to show that the tenants have breached a material term of the tenancy.

I accept the evidence of the tenant that the temporary fence has been in place since the tenancy commenced in 2019, as this was to keep the tenant's dog within the property.

The landlord did not attend the hearing to provide evidence. Further, I find the tenants version to be credible as it is supported in a letter filed marked as E1 Contractor letter, in the landlord's evidence, which reads in part,

"I had come back and did a few other pressing matters around her house as well as staining the deck I had got to talking about a fence between the two yards and though [landlords name removed] did not want that I convinced her of it because the temporary rental fencing, which to my understanding from both parties was to be temporary. **That being said, and to my knowledge, had been up for a fairly long time**".

[Reproduced as written.]

Based on the above, I find I cannot find the temporary fencing was a breach of a material term of the tenancy as it has been in place for at least two years.

I accept the evidence of the tenant that they were informed by the landlord not to remove the leaves in November 2019, when they asked the landlord to borrow the leaf blower. The landlord did not attend to provide evidence.

Further, the final warning letter dated January 31, 2021 by the landlord states yard maintenance; however, they only refer to the leaves in that paragraph. The landlord did not submit any photographs of any unreasonable amount of leaves to support that the tenants failed to comply with that final warning letter.

While I accept the lawn was slightly overgrown; however, it was not in an unreasonable state. I accept the evidence of the tenant that they have someone come to the premises every two weeks to cut the lawn. The landlord did not appear to provide evidence.

Based on the above, I find the landlord has failed to prove the tenants have failed to maintain the yard. Therefore, I cannot find the tenants breached a material term of the tenancy agreement.

As I have found the landlord has failed to prove the reason stated in the Notice. I grant the tenants' application to cancel the Notice. I find the Notice has no force or effect. The tenancy will continue until legally ended in accordance with the Act.

2 Month Notice

When a tenant has filed to cancel a notice to end tenancy for landlord's use and calls into question the "good faith" requirement, the onus lies on the landlord to prove the two-part test as follows:

1. The landlord must truly intend to use the premises for the purposes stated on the notice to end tenancy; and
2. The landlord must not have an ulterior motive as the primary motive for seeking to have the tenant vacate the rental unit.

In this case, the tenant has raised the issue of "good faith". As the landlord did not attend the hearing to provide testimony, nor did the landlord provide a written statement or an affidavit for me to consider, I find I cannot assess the landlord's credibility and determine if the landlord truly intends occupy the premises.

Further, the only evidence provided by the landlord was some business documents and zoning document which does not support the issue stated in the 2 Month Notice. Under section 49 of the Act there is a separate provision to end a tenancy for non-residential use, which would be for operating a business. That was not the reasons stated in the 2 Month Notice.

Furthermore, I find it more likely than not that the landlord only issue the 2 Month Notice as an alternate plan should the tenants' application to cancel the Notice be granted. The tenant's made their application to cancel the Notice on March 9, 2021, which the hearing packages were produced by the Residential Tenancy Branch on March 15, 2021, and sent to the tenant for service on the landlord, it was 11 days after the tenant's application was processed that the landlord served the tenant with the 2 Month Notice. I find this leads me to believe that this was not the primary motive for ending the tenancy.

Based on the above, I grant the tenants' application to cancel the 2 Month Notice. I find the 2 Month Notice has no force or effect. The tenancy will continue, until legally ended in accordance with the Act.

As the tenants were successful with their application, I find the tenants are entitled to recover the filing fee from the landlord. I authorize the tenants a one-time rent reduction from a future rent payable to the landlord.

Conclusion

The tenants' application to cancel the Notice and to cancel the 2 Month Notice is granted. I authorize the tenants a onetime rent reduction from a future rent payable to the landlord to recover the cost of the filing fee.

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: June 23, 2021

Residential Tenancy Branch