



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 (the "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 sworn testimony, to make submissions and to call witnesses. The tenant was assisted by a family member.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Should the 2 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Should the landlord be ordered to comply with the Act, regulations or tenancy agreement?

Is the tenant entitled to recover their filing fee from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

This tenancy began in September 2019, initially for a fixed-term ending on August 31, 2020 and on a month-to-month basis thereafter. A copy of the signed tenancy agreement was submitted into evidence. The monthly rent is \$500.00 payable on the first of each month. The rental unit is a single detached home. The landlord resides in an adjoining property with their family.

The landlord issued a 2 Month Notice dated March 15, 2021. The reason provided on the notice is that the rental unit will be occupied by the parents of the landlord or the landlord's spouse. The landlord submits that their spouse's parents, who are currently residing in their home with them and have been providing child-care assistance, will move out and occupy the rental unit.

The parties gave testimony regarding their adversarial relationship and complaints about one another's conduct throughout the tenancy. The parties each characterized the other as unreasonable, disrespectful and that they behave without regard for the Act, regulations or tenancy agreement. The parties also testified that there was previously an employer-employee relationship where the tenant was working for the landlord. The parties submitted into documentary evidence copies of various correspondence between them and written submissions.

There was an earlier decision under the file number on the first page of this decision pertaining to the landlord's application seeking an Order of Possession on the basis of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated April 2, 2021. The landlord's application was dismissed and the 10 Day Notice was cancelled by the presiding Adjudicator.

The landlord has subsequently issued a 1 Month Notice to End Tenancy for Cause dated June 2, 2021.

Analysis

Pursuant to section 49(8)(a) a tenant may dispute a Notice to End Tenancy for Landlord's Use by filing an application for dispute resolution within 15 days of receipt of the notice. In the present case the tenant confirmed receipt of the 2 Month Notice on March 15, 2021 and filed their application to dispute the notice on March 22, 2021. Therefore, I find the tenant was within the timeline provided.

When a tenant disputes a notice the onus shifts to the landlord, to demonstrate on a balance of probabilities that the tenancy should end for the reasons provided on the notice.

The tenant raised the issue of the good faith intention of the landlord.

Residential Tenancy Branch Policy Guideline number 2 notes that good faith is an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage. A claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End the Tenancy.

This Guideline reads in part as follows:

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 they do not have an ulterior motive for ending the tenancy.

The tenant has raised the good faith intention of the landlord which I find has merit. It is plainly evident from the testimony, documentary evidence and submissions of the parties that there is an adversarial relationship between the parties. The landlord gave evidence that they wish for the tenancy to end as they feel the tenant is dishonest, disrespectful and an unreasonable person.

The bulk of the oral testimony provided by the landlord pertained to their conflicts and complaints about the tenant. Similarly, I find that the majority of the documentary submissions pertain to issues other than the basis for the 2 Month Notice.

Based on the evidence before me I find that the issuance of the 2 Month Notice, is motivated not by the reasons stated on the notice to allow family member to occupy the rental unit, but by the deteriorating relationship between the parties.

I find on the balance of probabilities that the intention and motivation of the landlord is to end this tenancy, and any future occupancy of the rental unit is a secondary concern. Therefore, the 2 Month Notice is cancelled. The tenancy will continue until it is ended in accordance with the Act.

I find insufficient evidence in support of the portion of the tenant's application seeking an order of compliance. While the tenant complained about the landlord's behaviour and conduct I find insufficient evidence that there has been any breach of the Act, regulations or tenancy agreement that an order is appropriate. I therefore dismiss this portion of the tenant's application without leave to reapply.

As the application has merit I find that the tenant may deduct the \$100.00 filing fee from the next months' rent due.

Conclusion

The 2 Month Notice of March 15, 2021 is cancelled and of no further force or effect.

The tenant is authorized to make a one-time deduction of \$100.00 from their next scheduled rent payment.

The balance of the tenant's application is dismissed without leave to reapply.

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: July 8, 2021

Residential Tenancy Branch