



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **PSF, OLC, FFT, CNL-MT**

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "*Act*") for:

- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- an order that the landlord comply with the Act, regulations or tenancy agreement pursuant to section 62;
- authorization to recover the filing fee from the landlord pursuant to section 72;
- more time to make an application to cancel the landlord's 2 Month Notice to End Tenancy for Landlord's Use (the "2 Month Notice") pursuant to section 66; and
- cancellation of the 2 Month Notice pursuant to section 49.

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 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

Is the tenant entitled to additional time to file their application to dispute a 2 Month Notice?

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

Is the tenant entitled to any of the relief sought?

Is the tenant entitled to recover the 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.

The parties agree that this tenancy began in January 2016. The monthly rent is \$1,025.00 payable on the first of each month. The tenant paid a security deposit of \$425.00 which is still held by the landlord. The rental unit is a suite in a multi-unit building. There is no written tenancy agreement.

The parties say that the landlord sent an email notice to end the tenancy on May 11, 2021. A copy of the emailed Notice was submitted into evidence. The Notice is not on the prescribed form and does not identify a valid reason to end the tenancy pursuant to the *Act*. The document is more in the nature of a proposed Mutual Agreement.

A 2 Month Notice was subsequently issued on May 25, 2021. The reason provided on the notice for the tenancy to end is that the landlord's parents intend to occupy the rental unit.

The parties agree that the rental unit was provided with furniture which were removed from the suite in May 2021. The parties listed the furniture removed as; 2 couches, 2 coffee tables, a desk and a bedside table.

The tenant submits that their monthly rent includes use of a parking spot in the building and a storage locker. The tenant testified that the landlord is seeking additional payment for continued use of the parking and storage. The tenant submits that they have agreed to make periodic additional payments over the course of the tenancy to "keep the peace". The tenant seeks a reduction in the monthly rent due to the removal

of the furniture, a determination that the rent includes exclusive use of the parking spot and storage, and characterizes their overpayments as illegal rent increases.

The landlord disputes the tenant's submissions in their entirety, characterizes the tenant as dishonest and submits that the tenancy agreement did not include use of the furniture, parking or storage. The landlord gave lengthy testimony complaining about the tenant's use of the rental unit, and ongoing disputes.

Analysis

Section 49(8) of the *Act* provides that upon receipt of a notice to end tenancy for landlord's use, the tenant may dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch within 15 days of receipt of the notice.

In the present case the parties agree that the tenant was served with 2 documents to end the tenancy on May 11, 2021 and a second on May 25, 2021. The tenant filed their amendment to dispute the 2 Month Notice on June 9, 2021. I find that the tenant was within the 15 days of receipt of the 2 Month Notice on May 25, 2021 provided in the *Act* to file their application. Accordingly, I find no need to make a finding on the tenant's application for an extension of time.

If a tenant files an application to dispute a notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the Notice to End Tenancy.

The copy of the document served on the tenant on May 11, 2021 is clearly deficient as a Notice to End Tenancy as it fails to comply with the form and content requirements of section 52 of the *Act* in that it is not in the prescribed form and does not identify a valid basis for the tenancy to end. I find the document of May 11, 2021 to be of no force or effect.

The landlord provided little information on the reasons for the 2 Month Notice instead using their time to complain in great detail and fervor about the tenant's behaviour, characterizing them as dishonest and detailing ongoing conflicts with the tenant. The landlord also complained about the condition of the rental unit and their monetary losses.

Based on the evidence, I find there is evidence that the landlord's motivations for issuing the 2 Month Notice is based on their ongoing conflicts with the tenant and their

deteriorating relationship. I find insufficient evidence that the parents of the landlord or the landlord's spouse will occupy the rental unit. No evidence was provided detailing why it would be appropriate for the parents to occupy the rental unit, where they are relocating from or the reason this move is occurring at the present time.

I find on a balance of probabilities that there is sufficient doubt regarding the intention and motivation of the landlord. Therefore, the 2 Month Notice is cancelled. The tenancy will continue until it is ended in accordance with the *Act*.

Section 67 of the *Act* read in conjunction with paragraph 65 (1)(f), allows me to reduce the past rent by an amount equivalent to the reduction in value of a tenancy agreement for services or facilities that are required pursuant to the tenancy agreement but have not been provided.

The landlord failed to prepare this tenancy agreement in writing as required under section 13(1) of the *Act*. I find that it is inappropriate for a landlord to fail to document the terms of a tenancy agreement in writing and then rely upon the silence to interpret terms in a manner favourable to themselves.

The landlord is in the business of accepting payment for the use of rental units. It is their duty to comply with the provisions of the presiding legislation and to prepare tenancy agreements and documents in accordance with the *Act* and regulations.

If furniture, parking and storage was not included in the monthly rent it is reasonable to expect that the issue would have been addressed at an earlier point in this tenancy which began over 5 years ago. I find that the evidence submitted including earlier correspondence between the parties treats the parking and storage as services and facilities the tenant is entitled to under their agreement. I find that the recent removal of furniture and the attempts by the landlord to retroactively claim payment for the use of the parking and storage appears to be retaliatory action by the landlord for a relationship that has considerably deteriorated.

I do not find the landlord's submission that these items were not included in the rent to be particularly plausible or supported in the documentary evidence of the parties. I find that the monthly rent of \$1,025.00 was for a furnished suite and the use of parking and storage. I accept the evidence of the parties that the tenant continues to use the parking and storage but the furniture in the rental suite has been removed by the landlord.

I find that the removal of the furniture has had some impact on the value of the tenancy. Residential Tenancy Policy Guideline 16 provides guidance in determining the value of the damage or loss under such circumstances. The furniture described are major pieces where their absence would be notable. I find that the removal of the furniture on May 25, 2021 has caused the value of the tenancy to decrease by \$100.00, approximately 10% of the monthly rent.

I issue a one-time monetary award to the tenant for loss of value of the tenancy agreement of \$400.00 the 4-month period from May 25, 2021 to September 24, 2021, the date of this decision.

I order that the tenant is entitled to an ongoing reduction in the rent for this tenancy of \$100.00 for the value of the furniture that has been removed. The monthly rent for October 1, 2021 and onwards is \$925.00. As noted above, this monthly rent includes use of the parking and storage locker.

I find that any payments made by the tenant to the landlord during this tenancy for the cost of repairs, maintenance or additional payment with rent are payments made based on agreements between the parties and not rental increases or a result of a breach on the part of the landlord. The tenant had no obligation to pay these amounts and while they may have felt uncomfortable with declining to make these payments the evidence before me is that the tenant agreed to the payments free of any undue duress or coercion.

While interactions with the landlord may have been unpleasant and frustrating, I find insufficient evidence that the conduct of the landlord breached the Act, regulations or tenancy agreement such that an order of compliance is appropriate. I dismiss this portion of the tenant's application.

As the tenant was successful in their application they are also entitled to recover their filing fee from the landlord.

As this tenancy is ongoing I allow the tenant to make a one-time deduction of \$500.00 from their next scheduled rent payment in satisfaction of their monetary award.

Conclusion

The Notices to End Tenancy of May 11, 2021 and May 25, 2021 are cancelled and of no further force or effect. This tenancy continues until ended in accordance with the Act.

The monthly rent for this tenancy is reduced by \$100.00 to \$925.00. The monthly rent includes use of the storage and parking.

I issue a one time monetary award in the amount of \$500.00 for retroactive rent reduction and recovery of the filing fee. As this tenancy is ongoing the tenant may satisfy this monetary award by making a one-time deduction of \$500.00 from their next scheduled rent payment.

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: September 23, 2021

Residential Tenancy Branch