



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, CNL

Introduction

The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act* (the “**Act**”) and the singular of these words includes the plural.

This hearing dealt with the tenant’s application pursuant to the *Act* for:

- cancellation of the Two Month Notice to End Tenancy for Landlord’s Use of Property (the “**Notice**”) pursuant to section 49;
- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, to call witnesses, and to cross examine one another. As both parties were present, service of documents was confirmed. The landlord acknowledged service of the tenant’s Application for Dispute Resolution and evidence; the tenant acknowledged service of the landlord’s evidence. Neither party advised they took issue with timely service of documents.

Both parties were clearly informed of the Residential Tenancy Branch (RTB) Rules of Procedure about behavior including Rule 6.11 which prohibits the recording of a dispute resolution hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, that person will be referred to the RTB Compliance and Enforcement Unit for the purpose of an investigation under the *Act*. Both parties confirmed they understood.

Preliminary Issue

The landlord asked if translation services were provided by the RTB. The landlord was advised that the RTB does not provide translation services and if a translator is required, it is the party’s responsibility to have a translator present and available for the hearing. I asked the landlord if she wished to continue with the hearing without a translator and she confirmed she wanted to proceed.

Issues to be Decided

Is the tenant entitled to:

- 1) an order cancelling the Notice;
- 2) an order that the landlords comply with the Act.

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims, and my findings are set out below.

The parties entered into a written fixed term tenancy agreement July 1, 2018. Monthly rent is \$850.00 and is payable on the first of each month. The fixed term tenancy ends June 30, 2023. The landlord stated that rent has always been paid on time.

On November 15, 2021, the tenant was served with a 2 Month Notice for Landlord' Use. The Notice indicated that the rental unit will be occupied by "the father or mother of the landlord or the landlord's spouse". The tenant is disputing the Notice as he believes it was not issued in good faith.

The tenant testified that he and his daughter have resided in the basement suite at this address for the past eleven (11) years. In 2015, the property was sold to the current landlords. When property ownership transferred and the current owners took possession, multiple families moved in upstairs. The downstairs basement area is divided into two suites, both of which are tenanted. The tenant rents the back rental unit, and the front unit is rented by another resident of the property.

The tenant stated that throughout the summer and into the fall, the two (2) couples (two men and two women) from upstairs came to his door multiple times demanding that he pay more in rent. This demand was made in July, August, September, and October. He attests the landlords wanted to raise the rent by \$300 per month, from \$850.00 to \$1150.00 per month. He felt threatened and intimidated by these visits.

On November 15, 2021, the couples returned under the pretext of changing a lightbulb again demanding increased rent payments and when he said "no", he was handed the eviction notice. He asserts the Notice was issued because of his refusal to increase his monthly rent payment.

The tenant states he suffers from a serious heart and blood condition that worsened under stress. He further testifies that he is very stressed because of the uncertainty surrounding his once stable living arrangements. The landlords appearing in numbers at his door felt intimidating and unsettling -disrupting his life. The tenant included a signed letter from his attending physician dated November 24, 2021, in his evidentiary materials.

The landlord testified she and her husband purchased the property from a relative (aunt) in 2015. Based on the recommendations of their aunt, the previous owner, the current owners retained the tenant who occupies the back basement suite. Since 2015, two (2) families plus one (1) set of parent-in-laws moved into the upstairs or upper level of the house and have resided on the upper floor of the home since. The landlord testified in total nine (9) people occupy the upstairs home: three (3) children and six (6) adults.

The landlord confirmed there are two (2) suites on the lower level, one at the front and the other at the back of the house, both tenanted. The residents living in the basement suite at the front of the house pay \$1100.00 per month whereas the tenant in this dispute pays \$850.00 per month. The landlord admits that she wanted to increase the rent but states the request was for an additional \$100.00 per month not \$300.00 per month. She wanted to increase the rent from \$850.00 to \$950.00 per month. The landlord stated the tenant “tricked” them into signing a five (5) year lease. He filled out the paperwork and the landlord signed it because they trusted him. She asserts the Tenancy Agreement is unfair.

The landlord denies that the four (4) of the upstairs occupants called on the tenant demanding an increase in monthly rent and denies that it happened multiple times over the course of several months. She states that twice, prior to handing the tenant the Notice, the landlords approached the tenant making the request. The additional revenue is needed to pay the mortgage and offset other costs.

The landlord testified that her family want to move into the unit. When questioned directly about who would move into the suite, the landlord testified that her sister-in-law, brother, and their two children ages 8 and 4 plan to move into the downstairs suite. The children are now older and want their own rooms. The landlord states they require the downstairs suite immediately to fix things in suite in order to allow the other family to move in.

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 the intent or demonstrate that they do not have an ulterior motive for ending the tenancy. [emphasis added]

The tenant questioned the true intention behind the Notice pointing out that the Notice was handed to him immediately after he declined to accept a rent increase.

The landlord, in her affirmed testimony, stated the 2 Month Notice was issued to accommodate new living arrangements for her sister-in-law, brother, and their two children because of crowded living conditions in the upper level of the main house and the children wanted separate bedrooms. The back of the completed 2 Month Notice, issued to the tenant on November 15, 2021, however, stated the “father or mother of the landlord or landlord’s spouse” were the intended occupants.

The landlord admitted they approached the tenant requesting an increase of the monthly rent from \$850 to \$950 stating the rent increase was needed to cover the mortgage and other costs. The “needed money” argument flies in the face of having one of the parties from upstairs move downstairs, thereby decreasing the monthly revenue by \$850. Further, the landlord provided no information or argument as to why the tenant’s suite was chosen over the other resident’s suite.

The Policy Guideline referenced above is clear. *“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.”*

I find that the testimony of both parties during the hearing raised questions about the landlord’s good faith, particularly the undisputed testimony from the tenant that the 2-Month Notice was issued immediately following his refusal to accept a rent increase and confirmation from the landlord that they wanted to increase the rent.

Given the changing landscape of which family member may or may not be occupying the suite and that brothers, sisters-in-law and their children do not meet the definition of “close family member” as defined under s 49(1) of the *Act*, I find the landlord has not met their burden of proof (on the balance of probabilities) to show *“that they truly intend to do what they said on the Notice to End Tenancy”* or what was stated in the landlord’s affirmed testimony.

Notwithstanding that the landlord presented conflicting information about who would be residing in the rental unit, the landlord presented no information about what made one basement suite more preferable over the other. She did, however, confirm that as landlords, they wanted to increase the tenant’s monthly rent and pointed out that they were receiving \$1100.00 in rent from the other tenanted basement suite.

In summary, for the landlord to succeed in their 2 Month Notice, the landlord must satisfy the arbitrator why this specific tenancy must end for the purpose indicated on the 2 Month Notice. The landlord has failed to do so. Based on the foregoing, I find I have significant doubts as to

the true intent behind the landlord issuing the 2 Month Notice dated November 15, 2021. I therefore allow the tenant's application to cancel the 2 Month Notice.

The 2- Month Notice dated November 15, 2021, is hereby cancelled and is of no force or effect. The tenancy will continue until ended in accordance with the Act.

Order that the Landlord comply with the Act

Section 62 grants the director the authority to make any order necessary to give effect to the rights, obligations, and prohibitions und the Act. The section states in part:

62(3) *The director may make any order necessary to give effect to the rights, obligations, and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulation, or a tenancy agreement and an order that this Act applies.*

Quiet Enjoyment

As part of the tenancy agreement, tenants have a right to peace, quiet, and privacy in their homes – a right that comes from the common law principle of quiet enjoyment.

Section 22 of the Act deals with the tenant's right to quiet enjoyment. This section states as follows:

22. *A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:*

- (a) reasonable privacy*
- (b) Freedom from unreasonable disturbance.*
- (c) Exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 39 [landlord's right to enter rental unit restricted].*

I reviewed s. 22 of the Act in concert with *The Residential Tenancy Policy Guideline #6- Entitlement to Quiet Enjoyment* which states as follows:

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises.

This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of entitlement to quiet enjoyment. Frequent and ongoing interference or

unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

In determining whether a breach or quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.

A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the RTA (Policy Guideline #16) [emphasis added]

The tenant testified that the landlords persistently showed up at his door unannounced requesting the tenant increase the monthly rent. Although the number of persons in attendance differ, the landlord acknowledges that at least on two occasions prior to service of Notice, the tenant was approached by the landlords to increase his rent. I find the landlord's actions disrupted the tenant's quiet enjoyment and in the tenant's words caused increased stress, disrupted his life, impacted his health and well-being, and interfered with his quiet enjoyment of the suite. Section 22(b) is clear. The tenant is entitled to quiet enjoyment including "freedom from unreasonable disturbance".

I find that the tenant met the burden of proof on a balance of probabilities that he has experienced loss of quiet enjoyment. I find that the landlord used persistence as a tactic to try to force the tenant to comply with an unlawful rent increase request interfered with the tenant's quiet enjoyment.

I accordingly order that the landlord immediately provide the tenant with quiet enjoyment of the unit pursuant to s. 22.

I also find that the landlord attempted to raise the tenant's rent contrary to the *Act* and Regulations. The landlord attempted to coerce the tenant into a rent increase in 2021 during the rent freeze (still in effect until December 31, 2021) imposed by the Provincial Government in response to the COVID-19 pandemic. When coercion did not work, the landlord issued a 2-Month Notice to End Tenancy effective January 15, 2022.

I therefore grant the tenant's request pursuant to s. 62(3) that the landlord to comply with the *Act*, Regulation or tenancy agreement and I declare the tenant's rent to be \$850.00 per month. The landlord may not raise the tenant's rent unless that rent increase is done in accordance with s. 40, 41, 42, and 43 of the *Act* and is in keeping with the Regulations.

Conclusion

The tenant's request to cancel the 2- Month Notice, dated November 15, 2021, is granted. The tenancy will continue until ended in accordance with the *Act*.

The tenant's rent is \$850.00 per month. Pursuant to s. 62(3) I order the landlord only increase the rent in accordance with the *Act* and the Regulation.

Pursuant to s. 22 of the *Act* and in keeping with the tenancy agreement, I order that the landlord immediately provide the tenant with quiet enjoyment of his unit.

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: December 22, 2021

Residential Tenancy Branch