



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNL, FFT**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of a Two Month Notice to End Tenancy for Landlord's use ("Two Month Notice") pursuant to section 49;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

WP attended as agent for XDG, the owner of the unit. The tenant attended. Both parties had opportunity to provide affirmed testimony, present evidence and make submissions. No issues of service were raised. The hearing process was explained. Neither party called witnesses. The landlord submitted no documentary evidence.

Each party confirmed the email address to which this Decision shall be sent.

I informed the parties that no recording of the arbitration was permitted. Each party stated they were not recording the hearing.

Preliminary issues are addressed.

1. *Preliminary Issue - Burden of Proof*

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the Notice.

Residential Tenancy Branch Rules of Procedure - Rule 6.6 provides that when a tenant applies to cancel a notice to end tenancy, the landlord must present their evidence first.

Consequently, even though the tenant applied for dispute resolution and is the Applicant, the landlord presented their evidence first.

Background and Evidence

The parties explained the unit is on second floor of a building. The main floor is a commercial area suitable for temporary accommodation where the landlord has stayed from time to time. The tenant's elderly parents live in a separate residence nearby. A tenancy agreement between the parties was signed on May 15, 2017 which includes both the unit and the house. The parties agreed the issue in this hearing concerns only the tenant's apartment.

The parties did not submit a copy of the tenancy agreement.

The landlord requested an Order of Possession as they intended to move into the tenant's unit. The tenant objected to the application and asserted the landlord did not have good faith in the issuance of the Notice.

The parties agreed as follows about the background of the tenancy.

INFORMATION	DETAILS
Type of tenancy	monthly
Date of beginning	May 15, 2013 Current Lease: February 15, 2017
Date of ending	ongoing
Length of tenancy	8 years
Monthly rent payable on 1 st	\$1,400.00
Security deposit	\$770.00
Pet Deposit	\$690.00

Date of Application	August 6, 2021
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The parties agreed as follows with respect to the landlord's Notice:

INFORMATION	DETAILS
Type of Notice	Two Month Notice to End Tenancy for Landlord's Use
Date of Notice	July 28 2021
Effective Date of Notice	September 30, 2021
Date and Method of Service	Personal on July 29, 2021
Effective Date of Service	July 29, 2021
Application for Dispute Resolution filed - date	August 6, 2021

The Notice stated the landlord intended to occupy the unit.

The tenant testified as follows. The parties had an increasingly acrimonious relationship over the past year which culminated in a "vigorous" argument about 4-6 weeks before the Notice was issued. The tenant explained that he has a small recycling business. He also has separate exterior storage and parked motor vehicles. The landlord objected to these and issued a letter on May 5, 2021 to the tenant complaining and setting financial consequences. The tenant stated that the parties resolved the issues. However, he believed the residual consequences of the conflict are that the landlord wants him to move out.

The tenant expressed the belief the Notice was served within a few weeks of the argument on July 28, 2021 in retaliation. The tenant also expressed the opinion that market rent was "two or three times" what he pays and the landlord may intend to rent the unit for more money. The tenant asserted the Notice was not issued in good faith.

The landlord denied the tenant's version of events or description of their motive. The landlord testified they merely want to live in the unit as they have planned for several

years. They denied seeking revenge or retaliation as claimed by the tenant. The landlord asserted that the sole purpose for the issuance of the Notice was to move into the unit.

The tenant requested the Notice be cancelled as the landlord did not issue it in “good faith”.

The landlord requested an Order of Possession.

Analysis

To evict a tenant for landlord’s use of the property, the landlord has the burden of proving the reasons on the Notice. The parties had contrasting narratives which were provided in detail in the 83-minute hearing.

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

The tenant raised the issue of the intention of the landlord. The tenant questioned whether the landlord’s plan to occupy the unit was genuine. The tenant expressed a lack of confidence in the landlord’s stated plan. The tenant argued the landlord issued the notice in retaliation for the tenant’s activities (business and storage) even though both parties agreed the issues have been resolved.

The tenant asserted that the landlord has not issued the Two Month Notice in good faith but instead simply wants to get rid of the tenant, once a valued tenant, and now estranged. The motive, the tenant assert, is retaliation.

The Residential Tenancy Branch Policy Guideline # 2 states 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 Two Month Notice.

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.

In assessing the tenant's credibility, I found the tenant sincere, persuasive, matter of fact and believable. Where the parties' testimony differs, I give greater weight to the tenant's version of events.

The tenant has raised the good faith intention of the landlord which I find has some basis.

While the landlord denied they hold any resentment, I accept the tenant's testimony that the parties acrimoniously discussed his business and storage only 4-6 weeks before the landlord issued the Notice. While the parties agreed the landlord withdrew the threats in the letter of May 5, 2021, I nevertheless find that there was a serious conflict between the parties shortly before July 28 2021 when the Notice was issued..

I find that the timing of the Two Month Notice so quickly after the disagreement, raises doubts about the bona fide intentions of the landlord.

While the landlord provided some explanation about the reason for issuing the Notice, I find that I am not wholly convinced that there are no other factors which have given rise to the Notice. The landlord did not provide any supporting evidence of their plans to occupy the unit.

I find there are reasonable doubts about the intention of the landlord to occupy the unit at the end this tenancy. I find the landlord has not met the burden of proof that they intend to do what they said in the Notice.

In any event, while the landlord may indeed intend to use the rental unit for the purposes stated on the Notice, I find there may be additional reasons fueling the issuance of the Notice. I find the landlord has not met the burden of proof that they do not have an ulterior motive in issuing the Notice. Therefore, I find that the good faith argument has merit.

Consequently, I cancel the Two Month Notice. This tenancy will continue until it is ended in accordance with the agreement and the *Act*.

As the tenant have been successful in this application, the tenant is entitled to be reimbursed for the filing fee. Pursuant to section 72, the tenant is authorized to deduct this amount from rent payable in the amount of \$100.00 for one month only.

Conclusion

The tenant's claims are dismissed with leave to reapply except for the claims under section 47 and 72. The tenant's application to cancel the Two Month Notice is allowed. The Two Month Notice has no continuing force or effect. This tenancy will continue until ended according to the *Act*.

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 10, 2021

Residential Tenancy Branch