



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding EVKO ENTERPRISES and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL CNR OLC RP PSF LRE FFT

Introduction

This hearing dealt with an Application for Dispute Resolution (application) by the tenant seeking remedy under the *Residential Tenancy Act* (Act) to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property dated August 18, 2021 (2 Month Notice), to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice), for an order directing the landlord to comply with the Act, regulation or tenancy agreement, for regular repairs to the unit, site or property, for an order for the landlord to provide services or facilities required by the tenancy agreement or law, for an order to suspend or set conditions on the landlord's right to enter the rental unit, site or property, and to recover the cost of the filing fee.

The tenant, a support person for the tenant, KM (support) and the landlord, DK (landlord) attended the teleconference hearing. The parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form and make submissions to me. The hearing process was explained to the parties and an opportunity to ask questions was provided to both parties. Although a witness attended the hearing for the tenant, they were not called to testify.

The landlord confirmed that they had received and reviewed the tenants' documentary evidence and had the opportunity to review that evidence prior to the hearing. The landlord also confirmed that they did not submit any documentary evidence in response to the application. I find the landlord was sufficiently served as required by the Act. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

In addition, the parties confirmed their respective email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them.

As both parties confirmed that there was no 10 Day Notice served on the tenant, I have removed that portion of application pursuant to section 64(3)(c) of the Act. Also, Rule 2.3 of the RTB Rules authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenant a total of 7 matters of dispute on the application, the most urgent of which is the application to cancel the 2 Month Notice and the filing fee. I find that not all the claims on the application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenant's request to cancel the 2 Month Notice and for the filing fee at this proceeding. **The balance of the tenant's application is dismissed, with leave to re-apply.**

Issues to be Decided

- Should the 2 Month Notice be cancelled?
- If yes, is the tenant entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month-to-month tenancy began on May 1, 2020. The tenant pays monthly rent of \$500.00 per month, which is due on the 1st day of each month. The tenant paid a security deposit of \$250.00 at the start of the tenancy. The tenant continues to occupy the rental unit.

The tenant confirmed that they were served with the 2 Month Notice on August 18, 2021 and filed their application to dispute the 2 Month Notice on August 25, 2021, which is within the required 15-day timeline provided for under the Act.

The landlord wrote the following on the 2 Month Notice:

Reason for this Two Month's Notice to End Tenancy (check the box that applies)

☒ 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).

Please indicate which close family member will occupy the unit.

☐ The landlord or the landlord's spouse

☒ The child of the landlord or landlord's spouse

☐ The father or mother of the landlord or landlord's spouse

☐ The landlord is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

☐ All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.

☐ The tenant no longer qualifies for the subsidized rental unit.

The landlord testified that his son, IK (son) is 17 years old and that due to problems with the landlord's son failing school and having issues in the family home, the landlord wants their son to reside on their own but do not want him residing directly next door to the landlord. The landlord occupies 2 combined units of a 7-unit upper residential complex. The lower portion is not related to the Act as it is commercial space with 15 commercial units. The landlord stated that they are one of the owners of the building and that they act as the caretaker/manager of the complex.

The landlord confirmed that the rental unit in this matter is a 1-bedroom unit where the tenant pays \$500.00 rent. The other units that the landlord is not occupying are a 2-bedroom unit that pays \$600.00 per month, another 2-bedroom unit that pays \$700.00 per month, another 1-bedroom unit that pays \$500.00 per month and a larger 4-bedroom unit that pays \$1,000.00 per month.

The landlord testified that their combined two-unit residence has a total of 4 bedrooms of which 3 bedrooms are currently occupied. The landlord stated that the spare bedroom is used for storage and guest/office space. The landlord stated that it is time that his son moves out on his own.

The tenant raised the issue of good faith and claims that the 2 Month Notice was served shortly after the tenant called the RCMP in the middle of July 2021 to complain about

the landlord sexually harassing the tenant. The tenant stated that the RCMP did not provide a file number; however, the landlord confirmed that the RCMP did speak to the landlord regarding the tenant's complaint.

The tenant claims the landlord said, "Don't you want this body?" while showing off his muscles. The tenant stated that she replied, "no thank you" and that the tenant was not interested. The tenant also claims that the landlord asked her to "go out" with the landlord and that every time he would be at the rental unit, the landlord would show off his muscles.

The landlord stated that while the RCMP did call him to discuss the tenant's complaints, the landlord stated that "nothing like that went on" and stated that they are quite a bit younger than the tenant and that they have a girlfriend and a family.

During the hearing, the landlord stated that regardless of the outcome of the hearing, the landlord is willing to give the tenant until March 31, 2022 to vacate the rental unit.

Analysis

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

I find the tenant filed their application on time to dispute the 2 Month Notice as the tenant received the 2 Month Notice on August 18, 2021 and disputed the 2 Month Notice on August 25, 2021, which is within the 15-day timeline to dispute the 2 Month Notice.

When a tenant disputes a 2 Month Notice on time, the onus of proof reverts to the landlord to prove that the 2 Month Notice is valid and should be upheld. If the landlord fails to prove the 2 Month Notice is valid, the 2 Month Notice will be cancelled.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. In addition, when a tenant has filed to cancel a 2 Month Notice and call into question the "good faith" requirement, the onus lies on the landlord to prove that the 2 Month Notice was issued with an **honest intention, with no ulterior motive to end the tenancy.**

I have carefully considered all of the evidence and testimony before me and agree with the tenant that the 2 Month Notice was issued with an ulterior motive to end the tenancy and lacked an honest intention. I find the timing of the 2 Month Notice was within 1 month of the RCMP phone call by the tenant alleging sexual harassment against the landlord.

I also note that the son was not called as a witness to provide direct witness testimony nor did the landlord provide a signed Affidavit from the son that the son intends to occupy the rental unit. As a result, I am left with a disputed situation where the onus of the proof is on the landlord and not the tenant.

As a result, I afford the testimony of the landlord less weight than the testimony of the tenant given what I find to be questionable timing on the part of the landlord in terms of issuing the 2 Month Notice dated August 18, 2021. I find the landlord is acting with an ulterior motive. Therefore, on the balance of probabilities, I find it more likely than not that the landlord has not issued the 2 Month Notice in good faith due to insufficient evidence and as a result, **I cancel** the 2 Month Notice dated August 18, 2021.

I ORDER the tenancy to continue until ended in accordance with the Act.

As the tenant's application was successful, I grant the tenant a one-time rent reduction in the amount of **\$100.00** in full satisfaction of the recovery of the cost of the filing fee pursuant to sections 62(3) and 72 of the Act.

I CAUTION the landlord not to issue any future notices with an ulterior motive.

Conclusion

The tenant's application is successful.

The 2 Month Notice is cancelled.

The tenancy shall continue until ended in accordance with the Act.

The tenant is granted a one-time rent reduction in the amount of \$100.00 as noted above.

This decision will be emailed to both parties.

The landlord has been cautioned as noted above.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: January 12, 2022

Residential Tenancy Branch