



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL RP

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 ("2 Month Notice"), pursuant to section 49; and
- an order to the landlord to make repairs to the rental unit pursuant to section 33;

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

The landlord confirmed receipt of the tenant's application for dispute resolution ('application'). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenant's application. As both parties confirmed receipt of each other's evidentiary materials, I find that these documents were duly served in accordance with section 88 of the *Act*.

As the tenant confirmed receipt of the 2 Month Notice on August 21, 2021, I find that this document was duly served to the tenant in accordance with section 88 of the *Act*.

Issues(s) to be Decided

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

Is the tenant entitled to an order requiring the landlord to make repairs to the rental unit?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on January 1 2013, with monthly rent currently set at \$512.50, payable on the first of the month. The landlord holds a security deposit in the amount of \$250.00. The tenant still resides in the home.

The landlord served the tenant with a 2 Month Notice dated August 21, 2021 with an effective move-out date of November 1, 2021 for the following reason:

- The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse.

The landlord provided the following background for why they had decided to issue the 2 Month Notice. The landlord testified that the landlord became the sole owner of the home after their legal separation from their former spouse. The landlord testified that the property was jointly owned prior to the separation, and the former spouse had managed the rental of the property, and was the party who had rented the home to the current tenant. The landlord testified that they had never wanted to, nor do they currently want to, be a landlord as they do not live or work nearby.

The landlord testified that their intention was to sell the home. In order to prepare the home for sale, the landlord intends to move into the rental home while performing the renovations. The landlord anticipates that this would take up to a year due to work commitments.

The tenant is disputing the 2 Month Notice as they do not believe that the landlord issued the 2 Month Notice in good faith. The tenant submitted photos to show that the home has an extensive mould problem, which has not been properly addressed by the landlord. In addition to the tenant's application to cancel the 2 Month Notice, the tenant also made a request that the landlord perform repairs to address the mould issue.

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 intent or demonstrate that they do not have an ulterior motive for ending the tenancy.”

In the landlord’s own submissions and testimony, the landlord expressed their desire to sell the home as they were not interested in being a landlord. Although section 49(5) of the *Act* does allow the landlord to end a tenancy following the sale of a home, the requirements under this section must be met, and the landlord must then serve the tenant with a 2 Month Notice under the following grounds: “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 closer family member intends in good faith to occupy the rental unit”. In this case, the landlord has not yet sold the home, nor did the landlord provide the tenant with a 2 Month Notice on these grounds.

The landlord noted on the 2 Month Notice that it is their intention to move in while they prepare the home for sale. I note that section 49.2(1) of the *Act* provides that a landlord may make an application for dispute resolution requesting an order ending a tenancy, and an order granting the landlord possession of the rental unit, if all of the following apply:

- (a) the landlord intends in good faith to renovate or repair the rental unit and has all the necessary permits and approvals required by law to carry out the renovations or repairs;*
- (b) the renovations or repairs require the rental unit to be vacant;*
- (c) the renovations or repairs are necessary to prolong or sustain the use of the rental unit or the building in which the rental unit is located;*
- (d) the only reasonable way to achieve the necessary vacancy is to end the tenancy agreement.*

Although the landlord's testimony is that their plan was to end the tenancy in order to move in, I find that the landlord's own testimony and submissions raised considerable doubt as to the landlord's true motives in ending this tenancy. As the tenant had raised doubt as to the true intent of the landlord in issuing the 2 Month Notice, the burden, therefore, shifts to the landlord to establish that they do not have any other purpose to ending this tenancy. As the landlord stated, they no longer wish to be a landlord, and they plan on selling the home. Although the landlord testified that they would be moving into the home first, I am not satisfied that this is the main reason for ending the tenancy. If the landlord were to sell or renovate the home, the landlord must ensure that the appropriate steps are followed as stipulated under the *Act*. In this case, I find that the landlord may possibly been unaware of these obligations. Either way, I am not satisfied that the landlord has established that they are ending this tenancy simply to move into the home. Accordingly, I allow the tenant's application to cancel the 2 Month Notice. The landlord's 2 Month Notice, dated August 21, 2021 is hereby cancelled and is of no force and effect. This tenancy is to continue until it is ended in accordance with the *Act*.

The tenant also applied for an order for the landlord to perform repairs as the home has extensive mould. The landlord testified that although the tenant has expressed concerns in the past, the landlord was unaware that the problem remains unresolved. The landlord testified that the tenant had only raised the issue again after the tenant was served with the 2 Month Notice. Based on the evidence before me, I find that there may have been a possibility that the landlord was unaware of the extent of the mould. Either way, I find that the tenant had provided sufficient evidence to support that the home does currently have an issue with mould.

As noted in section 32(1) of the *Act*, the landlord has a duty to maintain the property in a state of repair that complies with health, safety, and housing standards required by law.

Landlord and tenant obligations to repair and maintain

32 (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.

(3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

(4) A tenant is not required to make repairs for reasonable wear and tear.

As there is a possibility that the mould could be harmful to the tenant or any occupants in the home, I order that the landlord investigate and address the issue on or before February 19, 2022. If the landlord has obtained confirmation that there is not issue or threat to the tenant's health, I order that the landlord provide this confirmation in writing from a licensed technician specializing in mould remediation, and provide a copy to the tenant.

Conclusion

The tenant's application to cancel the landlord's 2 Month Notice is allowed. The Landlord's 2 Month Notice, dated August 21, 2021 is cancelled and is of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

I order that the landlord investigate and address the mould issue on or before February 19, 2022. If the landlord has obtained confirmation that there is not issue or threat to the tenant's health, I order that the landlord provide this confirmation in writing from a licensed technician specializing in mould remediation, and provide a copy to the tenant.

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: January 19, 2022