



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNL, OLC, FFT, LRE**

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 (the "2 Month Notice") pursuant to section 49;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72; and
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70.

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 tenant represented themselves with assistance.

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.

The landlord confirmed receipt of the tenant's notice of hearing and evidence and testified that they have not served with any evidence though they have submitted evidence to the Branch's Dispute Management System. The tenant confirmed that they have not been served with any evidence by the landlord. Based on the undisputed evidence I find the landlord duly served with the tenant's materials in accordance with sections 88 and 89 of the Act. I find the landlord has not served the tenant with any of their evidence as required under Residential Tenancy rule of Procedure 3.15 and exclude them from consideration.

Issue(s) to be Decided

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

Should the landlord be ordered to comply with the Act, regulations or tenancy agreement? Should the landlord's right to enter the rental unit be subject to restrictions?

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.

This periodic tenancy began in 2014 and was assumed by the landlord when they purchased the rental property in 2021. The monthly rent is \$675.00 payable on the first of each month. A security deposit of \$325.00 is held by the landlord. The rental unit is a basement suite in a detached home.

The landlord issued a 2 Month Notice dated November 1, 2021. The tenant confirmed receipt of the notice. The tenant filed their application to dispute the notice on November 9, 2021. The reason provided on the notice for the tenancy to end is that the rental unit will be occupied by the landlord or the landlord's spouse.

The landlord gave brief testimony that they intend to occupy the rental unit themselves. They said they reside in a different house in the same municipality at the moment. Despite being provided an opportunity to elaborate and give additional details of their intentions or the reasons for relocating the landlord declined to do so and gave no further information or explanation. The landlord was forthright in their testimony that they wish this tenancy to end as there has been ongoing conflicts with the tenant and their guests.

Analysis

Pursuant to section 49(8)(a) a tenant may dispute a Notice to End Tenancy for Landlord's Use by filing an application for dispute resolution within 15 days of receipt of the notice. In the present case the tenant confirmed receipt of the 2 Month Notice on November 1, 2021 and filed their application to dispute the notice on November 9, 2021. Therefore, I find the tenant was within the timeline provided.

When a tenant disputes a notice the onus shifts to the landlord, to demonstrate on a balance of probabilities that the tenancy should end for the reasons provided on the notice.

The landlord was forthright that their desire for the tenancy to end is motivated, in part, by the ongoing disrespect from and conflict with the tenant and their guests. I find on a prima facie basis the landlord has shown that there are other motives for ending the tenancy beyond the occupation of the rental unit. The landlord provided little evidence or submissions on their good faith intentions and I am not convinced, based on the paucity of the evidence, that the landlord intends to do what they say on the Notice. Consequently, I allow the tenant's application and cancel the 2 Month Notice of November 1, 2021. The notice is of no further force or effect. This tenancy continues until ended in accordance with the *Act*.

I find little evidence in support of the balance of the tenant's application. I find little evidence that the landlord has breached any portion of the Act, regulations or tenancy agreement or that there is a basis for an order to restrict the landlord's right to enter the rental unit. Accordingly, I dismiss these portions of the tenant's application.

As the tenant was somewhat successful in their application I allow the tenant to recover their filing fee from the landlord. The tenant may satisfy this monetary award by making a one time deduction of \$100.00 from their next scheduled rent payment.

Conclusion

The 2 Month Notice of November 1, 2021 is cancelled and of no further force or effect. This tenancy continues until ended in accordance with the Act.

The tenant is authorized to make a one-timed deduction of \$100.00 from their next scheduled rent payment.

The balance of the tenant's application is dismissed without leave to reapply.

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 18, 2022

Residential Tenancy Branch