



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant application 1: LRE, CNC, LAT, OLC, RR, RP

Tenant application 2: CNL, MNDCT, RP, LRE, LAT, OLC, PSF

Introduction

This hearing dealt with the tenant's two applications (application) for dispute resolution seeking remedy under the Residential Tenancy Act . The tenant's first application was for:

- an order cancelling the One Month Notice to End Tenancy for Cause (1 Month Notice) issued by the landlord;
- an order suspending or setting conditions on the landlord's right to enter the rental unit;
- authorization to change the locks to the rental unit;
- an order requiring the landlord to comply with the Act, regulations, or tenancy agreement;
- a reduction in monthly rent; and
- an order requiring the landlord to make repairs to the rental unit.

The tenant's repeated application was for:

- an order cancelling the Two Month Notice to End Tenancy for Landlord's Use of Property (2 Month Notice) issued by the landlord;
- compensation for a monetary loss or other money owed;
- an order requiring the landlord to make repairs to the rental unit;
- an order suspending or setting conditions on the landlord's right to enter the rental unit; authorization to change the locks to the rental unit;
- an order requiring the landlord to comply with the Act, regulations, or tenancy agreement; and

- an order requiring the landlord to provide for services or facilities required by the tenancy agreement or the Act.

The tenant and the landlord attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

The parties were informed at the start of the hearing that recording of the dispute resolution hearing is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11.

Thereafter both parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters-

The landlord confirmed receipt of the tenant's application.

As to the evidence, the landlord denied receiving the tenant's evidence. When questioned, the tenant submitted that he attached the evidence to a fence post leading up to the landlord's house.

This method of serving documents is not recognized under section 88 of the Act, and I therefore declined to consider the tenant's evidence.

The tenant denied receiving the landlord's evidence. When questioned, the landlord said he handed the documents to an adult who resided in the rental unit with the tenant. The tenant was not clear in his response as to why that adult did not give the tenant the evidence package. I find the landlord properly served the evidence under section 88 of the Act, and I accepted the landlord's evidence.

Additionally, the landlord filed a written request to withdraw the 1 Month Notice. The tenant agreed to this request.

Due to the above, I find by mutual agreement of the parties, the 1 Month Notice dated September 29, 2021, with an effective date of November 4, 2021, is withdrawn.

Additionally, Rule 2.3 of the Rules authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenant indicated several matters of dispute on each application, the most urgent of the remaining issues is the application to cancel the 2 Month Notice. 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. The balances of the tenant's two applications are dismissed, with leave to re-apply.

Leave to reapply is not an extension of any applicable time limit.

Issue(s) to be Decided

- Should the 2 Month be cancelled under the Act?

Background and Evidence

This tenancy began on or about June 5, 2021, for a monthly rent of \$1,500 due on the 5th day of the month. There was no signed written tenancy agreement.

The tenant confirmed that he was served on October 4, 2021 with the 2 Month Notice dated October 1, 2021. The effective vacancy date on the 2 Month Notice is listed as December 5, 2021. The tenant disputed the 2 Month Notice on October 14, 2021, which was within the allowable time limitation under the Act of 15 days. Page two of the 2 Month Notice indicates the reason as the rental unit will be occupied by the landlord or the landlord's spouse.

The tenant indicated that they were disputing the 2 Month Notice because they do not believe the landlord issued the 2 Month Notice in good faith, and cited that the landlord did not intend on occupying the rental unit, and instead, the landlord intended on renovating and turning the rental unit into an Air B&B.

The evidence shows the landlord occupies a separate home on "the mountain" on the 10 acre property owned by the landlord. The rental unit is above a space referred at

various times during the hearing, as a workshop, office, garage or storage space elsewhere on the property.

In accordance with the Rules, the landlord proceeded first in the hearing to provide support for the landlord's Notice.

The landlord said he would not be occupying or moving into the rental unit. The rental unit is above his office or former office/storage space and he now finds the tenant too disruptive for various reasons. The landlord said that he has been avoiding the tenant as of late, although they were friends for 30 years.

The landlord said that he wants to take back the rental unit for easier access to the office on the first floor without having to deal with the tenant. The landlord said that the tenant's behaviour is aggressive and overall, it would be easier to have full access to the residential property to use the office without the tenant living there.

The landlord denied wanting to use the rental unit for an Air B&B, and that although it was used briefly for that purpose, he did not want to repeat that experience.

The tenant submitted that the whole eviction started due to his request for a signed, written tenancy agreement. The tenant asserted the Notices were retaliatory.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

I have considered the relevant evidence of each party and reached a decision taking into account the Act, Regulation, and policy, on the balance of probabilities.

When a tenant disputes a 2 Month Notice, the landlord bears the onus to prove that the Notice is valid, was issued in good faith, and should be upheld. If the landlord fails to prove the Notice is valid, it will be cancelled.

Section 49 (3) states a landlord who is an individual 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.

Tenancy Policy Guideline 2 A provides that a landlord may end a tenancy if they in good faith intend to use the rental unit as a “living accommodation or as part of their living space”.

Policy Guideline also states that “good faith means a landlord is acting honestly, and they intend to do what they say they are going to do”.

The landlord confirmed that neither he nor his spouse will occupy the rental unit as a living accommodation. I find the landlord’s reason for seeking an end to the tenancy was due to personal issues with the tenant and it would be easier on the landlord if the tenant were gone.

For these reasons, I find the 2 Month Notice is invalid under the Act due to insufficient evidence that the landlord will occupy the rental unit for a living accommodation. I also find the Notice was not issued in good faith as the landlord confirmed he did not intend to use the rental unit for the stated purpose.

As a result of the above, I **order** that the 2 Month Notice date October 1, 2021, for an effective move-out date of December 5, 2021, is cancelled, and it is of no force or effect. The tenancy shall continue until it is ended in accordance with the Act.

Conclusion

The tenant’s application seeking cancellation of the 2 Month Notice at issue has been granted.

The 2 Month Notice, which listed an effective move-out date of December 5, 2021, is cancelled.

All other issues in the tenant’s two applications not related to the tenant’s request to cancel the 1 Month Notice or the 2 Month Notice are dismissed, with 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*. Pursuant to section 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: February 17, 2022

Residential Tenancy Branch