



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, FFT

Introduction

On September 20, 2021, the Tenant filed an Application for Dispute Resolution under the *Residential Tenancy Act* (“the *Act*”) to cancel a Two-Month Notice to End Tenancy for Landlord’s use of the Property (the “Notice”) dated September 14, 2021, for an order for the Landlord to comply with the *Act*, and for the recovery of their filing fee for this application. The matter was set for a conference call.

The Landlord and the Landlord’s Advocate (the “Landlord”) as well as the Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. Both parties were advised of section 6.11 of the Residential Tenancy Branches Rules of Procedure, prohibiting the recording of these proceedings.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure requires the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issues to be Decided

- Should the Notice, dated September 14, 2021, be cancelled?
- If not, is the Landlord entitled to an order of possession?
- Should the Landlord be ordered to comply with the *Act*?
- Is the Tenant entitled to the recovery of their filing fee for this application?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The Tenant testified that the tenancy began in mid-December 2017 as a month-to-month tenancy but that on August 1, 2020, they signed a fix-term tenancy agreement with the Landlord. The Tenant testified the new fix-term tenancy was for a period of two years, with rent set at \$700.00 per month, to be paid by the first day of each month and that no security deposit had been paid for this tenancy. The Tenant submitted a copy of the August 1, 2020, agreement into documentary evidence.

The Landlord testified that they did sign this two-year agreement with the Tenant but that the agreement was never signed by the Tenant and therefore was not valid.

The Tenant testified that they did sign the document and that they are of the understanding that the agreement they signed with the Landlord, dated August 1, 2020, was for a fixed-term tenancy ending July 31, 2022.

Both parties agreed that the Tenant was served with the Notice to end tenancy dated September 14, 2021, by personal service. The Notice indicated that the Tenant was required to vacate the rental unit on December 1, 2021. The reason checked off by the Landlord within the Notice was as follows:

- 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 close family member intends in good faith to occupy the rental unit.

The Landlord testified that they sold the property and that they received a letter from the Buyer dated September 14, 2021, requesting that they issue the Notice to end tenancy. The Landlord submitted a copy of the letter they received from the Buyer into documentary evidence.

The Landlord also testified that the Buyer's intent is to end this tenancy and re-rent the rental unit at a higher rate. The Landlord stated that the Buyer had advised them the rent was too low, and they wish to re-rent the property at the higher rent rate of \$1,000.00 per month.

The Landlord was asked if the Buyer had been advised of the date and time of these proceedings and provided with the Notice of Hearing documents? The Landlord testified that they had advised the Buyer, and invited them to attend, but that the Buyer said this hearing was the Landlord's problem and refused to attend.

The Tenant expressed concern that this was the second attempt to end their tenancy by this Landlord. Both the Landlord and the Tenant agreed that they had a prior hearing with the Residential Tenancy Branch, on August 13, 2021, regarding a previous Two-Month Notice to End Tenancy for Landlord's use of the Property, issued on April 1, 2021, which had been cancelled during that previous proceeding.

The Tenant testified that they feel the Landlord should stop issuing these notices as they are in a fixed-term tenancy and that this tenancy could not be ended before the end of that fixed term, on July 31, 2022.

Analysis

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

I accept the documentary evidence provided by the Tenant that the Landlord personally served the Notice to the Tenant on September 14, 2021. Section 49 of the *Act* states that upon receipt of a notice to end a tenancy, a tenant who wishes to dispute the notice must do so by filing an application for dispute resolution within 15 days of receiving the Notice. Accordingly, the Tenant had until September 29, 2021, to dispute the Notice. In this case, The Tenant filed to dispute the Notice on September 20, 2021, within the required timeline.

The Tenant's application called into question whether the Landlord had issued the Notice in good faith. The Residential Tenancy Policy Guideline 2 address the "good faith requirement" as follows:

"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 Notice to End the Tenancy.

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."

I have reviewed the testimony and documentary evidence before me, noting the letter from the Buyer to the Landlord. This letter states that the Buyer or a close family member of the Buyer intends to live in the rental unit. However, I accept the Landlord's testimony that the Buyer's true intent is to re-rent this rental unit at a higher rate of rent. Therefore, I find that this Notice was not issued in good faith.

Consequently, I grant the Tenant's application to cancel the Notice dated September 14, 2021 and find that the Notice has no force or effect. The tenancy will continue until legally ended in accordance with the *Act*.

As for the Tenant's request for an order for the Landlord to comply with the *Act*, the Tenant has expressed concerns regarding the Landlord's multiple failed attempts to end this tenancy. Although there may be cause for concern when a landlord issues multiple notices to end a tenancy; However, in this case, as this Landlord has sold this property

and is no longer the landlord for this tenancy, I find that there are no legal grounds to issue an order to comply with the *Act*.

Section 72 of the *Act* gives me the authority to order the repayment of a filing fee for an application for dispute resolution. As the Tenant has been successful in their application to dispute the Notice, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for their application. I grant the Tenant a monetary order in the amount of \$100.00 for the recovery of their filing fee.

Conclusion

The Tenant's application to cancel the Notice dated September 14, 2021, is granted. The tenancy will continue until legally ended in accordance with the *Act*.

I find for the Tenant under section 72 of the *Act*. I grant the Tenant a **Monetary Order** in the amount of **\$100.00**. The Tenant is provided with this Order in the above terms, and the Landlord must be served with this Order as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: February 1, 2022

Residential Tenancy Branch