



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDCT, PSF, RR, RP, OLC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlords' 2 Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice"), pursuant to section 49;
- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order to the landlords to provide services or facilities required by law pursuant to section 65;
- an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlords to make repairs to the rental unit pursuant to section 33; and
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65.

The landlords attended and were represented by their legal counsel, SD, in this hearing. 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 landlords confirmed receipt of the tenant's application and evidence. Counsel noted that although they had received the materials late, they had time to review the materials, and were ok with proceeding with the scheduled hearing, and the admittance of this evidence. In accordance with sections 88 and 89 of the *Act*, I find that the landlords duly served with the tenant's application and evidentiary materials. As the tenant confirmed

receipt of the landlords' 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 dated October 4, 2021, which was posted on the tenant's door, I find that the tenant deemed served with the 2 Month Notice in accordance with sections 88 and 90 of the *Act*, 3 days after posting.

Preliminary Issue – Tenant's Other Claims

Residential Tenancy Branch (RTB) Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

The hearing started at 11:00 a.m. and ended at 11:45 a.m. in order to deal with the landlord's Notice to End Tenancy. As the time allotted was insufficient to allow the tenant's other claims to be heard along with the application to cancel the 2 Month Notice to End Tenancy, I exercise my discretion to dismiss the portions of the tenant's application unrelated to the 2 Month Notice with leave to reapply. Liberty to reapply is not an extension of any applicable timelines.

Issues(s) to be Decided

Should the landlords' 2 Month Notice be cancelled? If not, are the landlords entitled to an Order of Possession?

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 tenancy began as a fixed-term tenancy on August 15, 2020, and continued on a month-to-month basis after August 15, 2021. Monthly rent is currently set at \$1,268.75, payable on the first of the month. The landlord currently holds a security deposit in the amount of \$625.00 for this tenancy.

On October 4, 2021, the landlords served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use citing 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 landlords provided the following background for why they had decided to issue the 2 Month Notice. The landlord provided a statement in their evidence package stating that they had owned property in the United States, and spent approximately six months of the year at their vacation property as snowbirds. The landlords are 77 and 80 years old. VB had an aneurism in 2019, and the landlords were unable to travel. In 2020 to 2021 the landlords were unable to travel due to the pandemic.

The landlords decided to sell their vacation home, and decided to stay closer to home for the above reasons. The landlords have stored their belongings after they had sold their home in their garage, while the suite is currently rented to the tenant. The landlords have decided that as they are no longer travelling as they used to, they wish to reclaim the use of their suite to enjoy for their personal use. The landlords stated that they wish to use the space for a gym, and other uses such as a putting green, game area, and arts and crafts studio. Counsel for the landlords also submitted that the reclaiming of the space was essential for the health of the landlords as they could no longer manage the issues that were associated with the tenant. The landlords described the tenant as aggressive and uncooperative, and provided evidence and testimony of how the tenant has made their life extremely difficult. Counsel for the landlords submit that the tenant's behaviour has a direct effect on the landlords' health, which has confirmed their desire to reclaim the suite for personal use.

The tenant is disputing the 2 Month Notice as they do not believe that the landlords had issued the 2 Month Notice in good faith. The tenant testified that the relationship between the two parties has deteriorated greatly, and that the landlords have attempted to end the tenancy in the past, and without success. On April 6, 2021, a hearing was held to deal with a 1 Month Notice to End Tenancy For Cause served on January 26, 2021. That 1 Month Notice was cancelled by the Arbitrator as the Arbitrator was not satisfied that the landlords had met the threshold to end the tenancy on basis of significant interference or unreasonable disturbance by the tenant. On September 21, 2021, a hearing was held to deal with a 2 Month Notice to End Tenancy for Landlord's Use dated April 27, 2021. The Arbitrator cancelled the 2 Month Notice, and declined to issue an Order of Possession as they determined that the landlords had failed to properly serve the tenant with the 2 Month Notice.

The tenant provided a written statement which detailed the landlords' issues with the tenant, which involved the tenant's refusal to comply with the imposed curfew hours for the tenant and their guests. The tenant testified that the landlords were unhappy with the tenant, and that this was the main motive for wanting to end the tenancy. The tenant

testified that the landlords had actually sold their home before deciding to rent the suite to the tenant on August 15, 2020, which contradicts the landlords' statement about how the landlords required the additional space after selling their home.

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."

Although the landlords stated that they had issued the 2 Month Notice in order to reclaim use of the suite, I find that the tenant had raised doubt as to the true intent of the landlords in issuance of this notice. The burden, therefore, shifts to the landlords to establish that they do not have any other purpose for ending this tenancy.

In consideration of the evidence and testimony before me, I find it clear that the landlords are extremely unhappy with the tenant, and wish for the tenancy to end. Although the landlords' testimony is that the primary reason for ending this tenancy is to reclaim the space for their own use after selling their vacation property, I find that the landlords' own submissions raised considerable doubt as to the main motive for ending this tenancy. The landlords' own description of the tenant was that the tenant is aggressive and uncooperative. Although I do not doubt that this tenancy has caused the landlords much stress, section 49 of the *Act* allows a landlord to end a tenancy for landlord's use, and not where the primary reason is one of the grounds listed under

section 47 of the *Act*, where a landlord may serve the tenant with a 1 Month Notice to End Tenancy for Cause. In this case, the landlords did attempt to end this tenancy by way of a 1 Month Notice to End Tenancy for Cause on January 26, 2021, but was unsuccessful in doing so after a hearing was held on April 6, 2021. The landlords then served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use shortly thereafter on April 27, 2021. As that 2 Month Notice was cancelled due to improper service, the landlords attempted to serve the tenant again with a new 2 Month Notice on October 4, 2021.

I find that the landlords have not met their burden of proof to show that they do not have any other purpose in ending this tenancy. Despite the explanation provided by the landlords about the need to reclaim the space in order to partake in their hobbies after selling their vacation home, the tenant raised considerable doubt by noting that this tenancy did not begin until after the landlords had already decided to sell their vacation property, and stay closer to home. I find this timeline to be inconsistent with the one provided by the landlords. I do not find the landlords' submissions to be convincing or persuasive, and actually raised considerable doubt as to their true intentions for wanting to end this tenancy.

Although the landlords do have the right to seek the end of this tenancy in accordance with the *Act*, I find that the evidence supports the deterioration of the relationship between the two parties, and the frustration of the landlords in having to deal with the tenant. Based on a balance of probabilities and for the reasons outlined above, I find that the landlords have not met their onus to show that they truly require the suite for their own use, and that there is no ulterior motive for ending this tenancy.

I therefore allow the tenant's application to cancel the 2 Month Notice. The 2 Month Notice dated October 4, 2021 is hereby cancelled, and is of no force or effect. The tenancy will continue until ended in accordance with the *Act*.

Conclusion

The tenant's application to cancel the landlords' 2 Month Notice is allowed. The Landlords' 2 Month Notice, dated October 4, 2021 is cancelled and is of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

I dismiss the remaining portions of the tenant's application 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*.

Dated: March 3, 2022