



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC

Introduction

This hearing dealt with the tenant's application, filed on February 9, 2022, pursuant to the *Residential Tenancy Act* ("Act") for:

- cancellation of the landlord's Two Month Notice to End Tenancy for Landlord's Use of Property, dated January 31, 2022 ("2 Month Notice"), pursuant to section 49; and
- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 62.

The landlord and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 56 minutes.

The hearing began at 11:00 a.m. and ended at 11:56 a.m. The landlord left the hearing from 11:02 to 11:03 a.m. to call back from a different telephone, since I was having trouble hearing him and his voice was echoing. I did not discuss any evidence with the tenant in the absence of the landlord.

The landlord and the tenant confirmed their names and spelling. The landlord and the tenant provided their email addresses for me to send this decision to both parties after the hearing.

The landlord confirmed that he co-owns the rental unit with his wife. He said that he had permission to represent his wife at this hearing. He provided the rental unit address.

Rule 6.11 of the Residential Tenancy Branch (“RTB”) *Rules of Procedure* does not permit recording of this hearing by any party. At the outset of this hearing, the landlord and the tenant both separately affirmed, under oath, that they would not record this hearing.

I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. Both parties had an opportunity to ask questions, which I answered. Neither party made any adjournment or accommodation requests. Both parties confirmed that they were ready to proceed with this hearing.

Throughout this hearing, I repeatedly informed both parties of the following information. I cannot provide legal advice to them or act as their agent or advocate. They are entitled to hire a lawyer to obtain legal advice, if they want to do so. They can consult the RTB website, to obtain information regarding the *Act*, *Regulation*, *RTB Rules*, and Residential Tenancy Policy Guidelines. Any settlement of this application will have to be agreed upon by both parties, on their own voluntary terms, regarding the 2 Month Notice, that is the subject of this application. My role as an Arbitrator is to make a decision or enforce a voluntary settlement agreement. I cannot determine a settlement agreement on behalf of both parties, advise them on what to do regarding a settlement, or provide detailed information regarding the RTB legislation to them.

At the outset of this hearing, both parties confirmed that they wanted to engage in settlement discussions. I provided approximately 43 minutes during this hearing for both parties to discuss a settlement. Both parties confirmed that they were unable to reach a settlement agreement regarding the 2 Month Notice, at this hearing. Both parties asked that I make a decision regarding this application.

The landlord confirmed receipt of the tenant’s application for dispute resolution hearing package and the tenant confirmed receipt of the landlord’s evidence. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant’s application and the tenant was duly served with the landlord’s evidence.

The tenant confirmed receipt of the landlord’s 2 Month Notice on January 31, 2022, by way of email. The landlord confirmed the above service method and date. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlord’s 2 Month Notice on January 31, 2022.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenant’s application to correct the spelling of the tenant’s first name. The tenant consented to this amendment during this

hearing. The landlord did not object to same. I find no prejudice to the landlord in making this amendment.

At the outset of this hearing, the tenant confirmed that her application for an order to comply with the *Act, Regulation* or tenancy agreement was to ensure that the landlord selected and indicated the proper reason for issuing the 2 Month Notice on the form itself. This claim is dismissed without leave to reapply, as it is not required, since I am determining the validity of the 2 Month Notice in this decision.

Issue to be Decided

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

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on April 1, 2019. Monthly rent of \$4,950.00 is payable on the first day of each month. A security deposit of \$2,475.00 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties. The tenant continues to reside in the rental unit.

The tenant provided a copy of the landlord's 2 Month Notice for this hearing. Both parties agreed that the 2 Month Notice is dated January 31, 2022, and the effective move-out date is March 31, 2022. Both parties agreed that the landlord's 2 Month Notice states the following reason for ending the tenancy:

- *The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).*

Both parties agreed that the landlord's 2 Month Notice does not indicate which family member will occupy the rental unit, since the landlord did not complete the following section of the notice:

- *Please indicate which family member will occupy the unit.*
 - *The landlord or the landlord's spouse.*
 - *The child of the landlord or landlord's spouse*
 - *The father or mother of the landlord or landlord's spouse*

The landlord testified regarding the following facts. There was no reason checked off on the 2 Month Notice, regarding who specifically will move into the rental unit. The landlord is aware of this and did not check off a reason because he was having a tough time with his wife. At the time that the landlord issued the 2 Month Notice to the tenant, he was not sure who would be moving into the rental unit because he was having problems with his wife, but they have gone to counseling. Now the landlord knows who is moving into the rental unit and it will be him, his wife, and his two children. The landlord did not issue an amended 2 Month Notice to the tenant, regarding who specifically will be moving into the rental unit. The landlord told the tenant that him and his family would be moving into the rental unit by way of emails and his statement. The landlord has a lot of reasons to move into the rental unit. It is clear that the landlord is moving in, the landlord wanted to move in before his wife's surgery, and his current house is on the market, so he has to move into the rental unit as soon as possible.

The tenant testified regarding the following facts. She was not told by the landlord that his family would be moving into the rental unit. She received text messages from the landlord on January 13, 2022, that the landlord wanted to sell the house and terminate her tenancy as of March 31, 2022. On January 18, 2022, she told the landlord that she would be looking for a new place, but it was difficult, as the covid-19 pandemic was rampant at this time. On January 31, 2022, she received the 2 Month Notice from the landlord, but no family was member was indicated by the landlord on the notice, regarding who was moving into the rental unit. On February 8, 2022, she told the landlord that she could move out of the rental unit on August 31, 2022, and she asked if the landlord was agreeable to that date, or she would file for dispute resolution at the RTB. On February 9, 2022, the tenant filed this application to dispute the landlord's 2 Month Notice. On February 11, 2022, the landlord told her that he was no longer moving to California, and he wanted to move into the rental unit. This happened after she filed her RTB application against the landlord. On February 11, 2022, she sent an email to the landlord regarding her RTB application, which she served to the landlord by registered mail. She wants to protect her legal rights. Her parents used their retirement savings and mortgaged their house, in order to help the tenant buy her own home, so it has been very stressful for her.

Analysis

In accordance with section 47(4) of the *Act*, the tenant must file her application for dispute resolution within fifteen days of receiving the 2 Month Notice. In this case, the tenant claimed that she received the 2 Month Notice on January 31, 2022, and confirmed that she filed her application to dispute it on February 9, 2022. Accordingly, I find that the tenant's application was filed within the fifteen-day time limit under the *Act*.

Where a tenant applies to dispute a 2 Month Notice within the time limit, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 1 Month Notice is based.

Sections 49 and 52 of the *Act*, state in part (emphasis in original):

49(1) In this section:

"close family member" means, in relation to an individual,

(a) the individual's parent, spouse or child, or

(b) the parent or child of that individual's spouse;

...

49(2) Subject to section 51 [tenant's compensation: section 49 notice], a landlord may end a tenancy

(a) for a purpose referred to in subsection (3), (4) or (5) by giving notice to end the tenancy effective on a date that must be...

...

49(3) 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.

...

49(7) A notice under this section must comply with section 52 [form and content of notice to end tenancy]...

52 In order to be effective, a notice to end a tenancy must be in writing and must

...

(d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy,

...

(e) when given by a landlord, be in the approved form.

I find that the landlord did not issue a valid 2 Month Notice to the tenant, as required by sections 49 and 52 of the *Act*. I find that the landlord did not properly complete the 2 Month Notice, to indicate who would occupy the rental unit, whether the landlord or a close family member. I find that the landlord did not properly state the grounds for ending the tenancy, since he did not indicate who would occupy the rental unit, whether the landlord or a close family member, as per sections 49 and 52 of the *Act*. I find that the landlord is required to inform the tenant, by way of the 2 Month Notice, whether the landlord's parent, spouse or child, or the parent or child of the landlord's spouse is moving into the rental unit, as per sections 49(1)(a) and (b) of the *Act*, above.

It is undisputed that the landlord did not indicate on the 2 Month Notice, in the relevant section, which family member is moving into the rental unit. It is undisputed that the landlord did not issue an amended 2 Month Notice to the tenant, indicating which family member is moving into the rental unit, after the notice was issued to her on January 31, 2022. It is undisputed that the landlord was aware that he did not indicate the above information, that the tenant informed the landlord about this information, and that the landlord did not rectify the situation after.

Although the landlord stated that he issued emails to the tenant regarding who was moving into the rental unit, this was only done after the tenant filed this application to dispute the 2 Month Notice. Further, the landlord is required to issue a notice to end tenancy in the approved form, as per sections 49 and 52 of the *Act*. Emails are not approved RTB forms.

The landlord testified that he did not know who was moving into the rental unit at the time that he issued the 2 Month Notice to the tenant. The tenant testified that she did not know who was moving into the rental unit at the time that the 2 Month Notice was issued to her by the landlord. The tenant testified that the landlord previously told her that he was selling the rental unit and then cancelled his plans to move to California.

I find that the tenant did not have proper notice of the landlord's reasons for ending her tenancy, as required by section 49 and 52 of the *Act*.

On a balance of probabilities and for the above stated reasons, I grant the tenant's application to cancel the landlord's 2 Month Notice. The landlord's 2 Month Notice, dated January 31, 2022, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

Conclusion

The tenant's application to cancel the landlord's 2 Month Notice is granted.

The landlord's 2 Month Notice, dated January 31, 2022, is cancelled and of no force or effect.

The landlord is not entitled to an order of possession.

This tenancy continues until it is ended in accordance with the *Act*.

The tenant's application for an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement 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: May 20, 2022

Residential Tenancy Branch