



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPL FFL CNL PSF

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- an Order of Possession for landlord’s own use pursuant to section 55; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant requested:

- cancellation of the landlord’s 2 Month Notice to End Tenancy for landlord’s own use (the 2 Month Notice) pursuant to section 46; and
- an order to the landlord to provide services or facilities required by law pursuant to section 65.

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 by the attending parties. Both parties confirmed that they understood.

Both parties confirmed receipt of each other’s applications for dispute resolution hearing package (“Applications”) and evidence. In accordance with sections 88 and 89 of the *Act*, I find that both the landlords and tenant were duly served with the Applications and evidence.

As the tenant confirmed receipt of the 2 Month Notice on January 18, 2022, I find that this document was duly served to the tenant in accordance with section 88 of the *Act*.

At the outset of the hearing, the tenant confirmed that they did not have any issues with the heating at the time of the hearing. Accordingly, this portion of the tenant's application was cancelled.

Preliminary Issue—Amendment to Tenant's Application

The tenant requested an amendment to add a claim for monetary compensation as part of this application. No formal amendments were filed by the tenant prior to the hearing date.

Rule 4.6 states the following:

As soon as possible, copies of the Amendment to an Application for Dispute Resolution and supporting evidence must be produced and served upon each respondent by the applicant in a manner required by the applicable Act and these Rules of Procedure.

The applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Amendment to an Application for Dispute Resolution and supporting evidence as required by the Act and these Rules of Procedure.

In any event, a copy of the amended application and supporting evidence must be received by the respondent(s) not less than 14 days before the hearing.

RTB Rules of Procedure 4.2 allows for amendments to be made in circumstances where the amendment can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made.

As this amendment was not received in accordance with RTB Rule 4.6, and as this amendment request does not qualify under Rule 4.2, the tenant's request to amend their application at the hearing was denied.

Issues(s) to be Decided

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

Is the landlord entitled to recover the filing fee?

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 month-to-month tenancy began in January 12, 2019. Monthly rent is set at \$1,150.00, payable on the first of the month. The landlord had collected a security deposit, which the landlords still holds.

The landlord served the tenant with a 2 Month Notice to End Tenancy for Landlord's use on January 18, 2022 for 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 landlord provided the following background for why they had decided to issue the 2 Month Notice. The landlord testified that their employer strongly encourages that employees work from home to lessen the spread of Covid-19. The landlord included a memorandum dated February 15, 2022 confirming this. The landlord is an accountant, and has been working from home for the majority of the time since mid-November 2021. The landlord submitted a statement in evidence and testified to the nature of their work during the hearing. The landlord testified that the nature of their work requires a professional work environment free from noise and disturbance. As an accountant, the landlord is also expected to maintain the confidentiality and privacy of the information that they are entrusted with. Furthermore, the landlord attends virtual meetings, which requires a professional work environment.

The landlord submitted photos of their current work setup, which is in the kitchen of the home. The landlord testified that this current setup does not meet any of the requirements as set out above, and the landlord has serious concerns about the continuation of their employment under these conditions. The landlord feels that they have no choice but to end the tenancy in order to have a dedicated and private office space.

The landlord responded to the tenant's concerns about the alternative areas. The landlord testified that the garage has been renovated but is currently used as a

recreational room for hosting parties and visitors. The landlord testified that there is a storage room that they cannot use because they feel that the room is haunted after their carpenter had passed away. The landlord testified that they now only use the room for storage. The landlord that they do have a guest room in the house that is reserved for overnight visitors. The landlord stated that they have family and friends who visit frequently, including a mother and son who stay at least three times per month.

The landlord also anticipates that their mother-in-law will be returning from out of the country in August 2022. The landlord submits that between the landlord and their spouse, they have 19 siblings, and frequently host family gatherings as well as get together with friends.

The tenant is disputing the 2 Month Notice as they do not believe that the landlord has issued the 2 Month Notice in good faith. The tenant testified that the landlord had changed the reasons for why they were ending the tenancy. The tenant testified that initially the landlord had informed them on January 17, 2022 that they wished to terminate the tenancy in order to perform some electrical and boiler work. The tenant testified that it was not until later when the landlord informed the tenant they required the suite for their home office. The tenant submitted a copy of the messages sent by the landlord on January 17, 2022. The landlord sent the tenant a message that stated "We really need the unit vacated for our safety and proper maintenance of our home. I am sending you the formal notice tomorrow".

The tenant also argued that the home is quite large, and the landlord has four bedrooms for a three member household. The tenant points out that the landlord has better alternatives than the kitchen. The tenant also pointed out the other one bedroom suite, which is currently tenanted for more than the tenant's suite for around \$1,400.00. Lastly, the tenant notes that the garage has been converted, and is currently tenanted for around \$1,300.00 per month. The tenant believes that they are paying much less, and the landlord has intentions to re-rent their unit for more than the \$1,150.00 that they are paying.

The tenant testified that the landlord has a history of evicting tenants in order to raise the rent. The tenant included a statement from a previous tenant who states that they had moved out after receiving a Notice to End Tenancy in order to convert the rental unit. The tenant states that the landlord did not do this. The tenant states that they were only paying \$800.00 per month, and were offered the garage apartment for \$1,000.00 per month.

The tenant is requesting cancellation of the 2 Month Notice.

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 for landlord's use, I find that the tenant had raised doubt as to the true intent of the landlords in issuing this notice. I find that the tenant raised doubt as to the landlord's true intentions in serving the 2 Month Notice. The burden, therefore, shifts to the landlord to establish that they do not have any other purpose to ending this tenancy.

I find that the tenant raised considerable doubt as to why the landlord required the tenant's specific rental unit for their own use. Although the landlord did provide detailed evidence about requiring an adequate home office, I find that the landlord's responses to be unsatisfactory as to why they require the tenant's specific rental unit for this purpose. Although I appreciate the fact that the landlord's role is a professional one where the kitchen area does not provide the landlord with the privacy and professional space their role requires, the landlord owns a large home with vacant spaces that can be converted for office use. Although the landlord's testimony is that they need to reserve space for overnight stays, and for visits and gatherings, I am not satisfied that

the landlord has demonstrated that the frequency and duration of these visits or gatherings would prevent the landlord from performing their job during their working hours. Furthermore, I find the details provided to be vague and unsupported in evidence. I find that the landlord does have access to multiple spaces that would suit their requirements, and would not require the displacement of the tenant.

Furthermore, I find the tenant had provided evidence to support that the landlord had provided a different reason to the tenant on January 17, 2022 before the tenant was formally served with a 1 Month Notice. The tenant was served with a 2 Month Notice after this conversation, citing different reasons.

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. I find that the tenant had raised considerable doubt as to the landlord's true intentions in ending this tenancy, especially considering the fact that although the landlord has alternate spaces that can be used for a home office. Furthermore, it is evident that the landlord has provided multiple reasons for wanting to end this tenancy despite the landlord's insistence that the space is required for a home office. Based on a balance of probabilities and for the reasons outlined above, I find that the landlord has not met their onus of proof to show that the landlord, in good faith, require the tenant to permanently vacate her rental unit in order for the landlord to occupy this pace.

For all these reasons listed, I allow the tenant's application to cancel the 2 Month Notice dated January 18, 2022. This tenancy is to continue until ended in accordance with the *Act*, regulation, and tenancy agreement.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the landlord was unsuccessful with their application, I find that the landlord is not entitled to recover the \$100.00 filing fee paid for this application. The landlord must bear the cost of this filing fee.

Conclusion

The landlord's application is dismissed without leave to reapply.

The tenant's application to cancel the landlord's 2 Month Notice is allowed. The Landlord's 2 Month Notice, dated January 18, 2022 is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

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 13, 2022