



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, FFT

Introduction

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

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice"), pursuant to section 49;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

While the tenant attended the hearing by way of conference call, the landlord did not. I waited until 9:47 a.m. to enable the landlord to participate in this scheduled hearing for 9:30 a.m. The tenant was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the tenant and I were the only ones who had called into this teleconference.

The tenant was clearly informed of the RTB Rules of Procedure Rule 6.11 which prohibits a participant from recording of a dispute resolution hearing. The tenant confirmed that they understood.

The tenant submitted proof in their evidentiary materials to show that they had personally served the landlord with the original hearing and application package on February 22, 2022. The tenant filed an amendment on February 25, 2022 to dispute a 2 Month Notice to End Tenancy for Cause. The tenant submitted a video in their evidentiary materials to show that they had served the landlords with a supplementary package on April 13, 2022 by placing the materials in their mail slot.. In accordance with sections 88, 89, and 90 of the *Act*, I find the landlord duly served with the notice of

hearing and tenant's application. In accordance with sections 88 and 90 of the Act, I find the landlord deemed served with the second package 3 days after the tenant had placed the materials in their mail slot. The landlord did not submit any written evidence for this hearing.

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 tenant entitled to an order for the landlord to comply with the *Act*?

Is the tenant 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 on April 30, 2014. Monthly rent is currently set at \$783.00, payable on the first of the month. The landlord holds a security deposit of \$400.00 for this tenancy.

The tenant testified that on January 13, 2022, the tenant received a 2 Month Notice to End Tenancy for Landlord's Use, but had only received the first two pages. The tenant disputed the 2 Month Notice as they feel the landlord did not issue the 2 Month Notice in good faith. The tenant testified that the landlord had wanted to increase the rent, and tenant had requested that the landlord serve the tenant with an official Notice of Rent Increase. The tenant subsequently received 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.”

I find that the tenant has raised doubt as to the true intent of the landlord in issuing this notice. The landlord did not attend the hearing to make submissions, nor did the landlord provide any written evidence in support of why the 2 Month Notice was issued.

I find that the landlord has not met their burden of proof to show that the rental unit would be occupied by the landlord or a close family member, and that is the true reason for ending this tenancy. I find that the tenant raised questions about the landlord's good faith, and significant doubt as to the true intentions of the landlord in the issuance of this 2 Month Notice.

I therefore allow the tenant's application to cancel the 2 Month Notice. The 2 Month Notice dated January 13, 2022 is hereby cancelled, and is of no force or effect. The tenancy will continue until ended in accordance with the *Act*.

I do not find it necessary to make any further orders at this time, but note that any rent increases should be given in accordance with the Act and legislation.

I find the tenant is entitled to recover the filing fee for this application.

Conclusion

The tenant's application to cancel the landlord's 2 Month Notice is allowed. The landlord's 2 Month Notice, dated January 13, 2022 is cancelled and is of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

I allow the tenant to implement a monetary award of \$100.00 for recovery of the filing fee by reducing a future monthly rent payment by that amount.

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 03, 2022

Residential Tenancy Branch