



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- cancellation of the Two Month Notice to End Tenancy for Landlord's Use (the 2 month Notice), issued pursuant to section 49; and
- an authorization to recover the filing fee for this application, under section 72.

The tenant and landlord YG attended the hearing. Landlord YG was assisted by advocate YL (the landlord). All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand the parties are not allowed to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5,000.00."

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with section 89 of the Act.

I note that section 55 of the Act requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the Act.

Issues to be Decided

Is the tenant entitled to:

1. cancellation of the 2 month Notice?
2. an authorization to recover the filing fee?

If the tenant's application is dismissed, is the landlord entitled to an order of possession?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below. I explained rule 7.4 to the attending party; it is the landlord's obligation to present the evidence to substantiate the Notice.

Both parties agreed that monthly rent is \$1,742.50, due on the first day of the month. At the outset of the tenancy a security deposit of \$800.00 was collected and the landlord holds it in trust.

The tenant affirmed that the tenancy started in June 2014 and his father HB was the tenant. HB went missing and the tenant started paying rent to the landlord in November 2015. The landlord stated she started collecting rent from the tenant at the end of 2015.

Both parties agreed they did not sign a tenancy agreement.

Both parties agreed the landlord attached the 2 month Notice to the tenant's door and the tenant received the Notice on March 24, 2022.

A copy of the 2 month Notice was provided. The 2 month Notice is dated March 23, 2022 and the effective date is May 31, 2022. It states: "the rental unit will be occupied by the landlord or the landlord's close family – the father or mother of the landlord or landlord's spouse". The landlord testified that her parents will occupy the rental unit.

The tenant submitted this application on March 29, 2022 and continues to occupy the rental unit. The tenant sleeps two nights per week in the rental unit and has two roommates.

The tenant said that in October 2021 the landlord asked to increase rent to \$2,000.00 per month. The tenant did not agree to the rent increase and the landlord served a one month notice to end tenancy for cause (the one month notice) dated November 19, 2021. The tenant disputed the one month notice and received the March 22, 2022 Residential Tenancy Branch (RTB) decision cancelling the one month notice on March 22, 2022. The landlord affirmed that she served the 2 month notice shortly after she received the March 22, 2022 decision because she had to serve the 2 month notice before the rent due date on April 01, 2022 in order to have a closer effective date.

The landlord stated that “circumstances have changed” after she served the one month notice and her parents need to immediately move to the rental unit. The landlord is responsible for the well-being of her parents, as she is the only daughter living in Canada. The landlord’s parents lived with the landlord during the pandemic and now they would like to have more space. The landlord does not wish to provide further details about her parents.

The landlord emailed a contractor to make the rental unit safe for elderly people on May 13, 2022:

As I discussed with you before, **my parents have been planning to move to our condo in downtown since November last year** and we need your help to senior proof the place. After two delays, we now expect the tenant to move out at end of June. As soon as they move out, we will need your help to tidy up the condo and add additional safety features.

[...]

The goal is to have all the work done as soon as possible so that my parents can move in.

(emphasis added)

The May 13, 2022 estimate issued by a contractor named “PL’s Renovation” states:

Proposal for [rental unit’s address]

- Add grab bar for toilets in both bathrooms
- Add grab bar for the shower upstairs
- Add grab bar for stairs
- Add stair treads

[...]

I will leave a couple of days for you in early July for the work. Please confirm the date as soon as possible. Thank you.

The tenant testified that he could not find information about the company PL's renovation. The landlord said that PL's renovation is a legitimate business that has been around for many years.

The tenant does not believe the landlord is acting in good faith. The tenant does not believe the landlord's parents plan to move to the rental unit.

Analysis

Section 49(8)(a) allows the tenant to dispute the 2 month Notice within 15 days after the date the tenant received it. As the tenant confirmed receipt of the 2 month Notice on March 24, 2022 and submitted this application on March 29, 2022, I find the tenant disputed the 2 month Notice within the timeframe of section 49(8)(a) of the Act.

Pursuant to Rule of Procedure 6.6, the landlord has the onus of proof to establish, on the balance of probabilities, that the Notice to end tenancy is valid.

RTB Policy Guideline 2A states that when issuing a notice under section 49 of the Act the landlord must demonstrate there is not an ulterior motive for ending the tenancy:

Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant, they do not have an ulterior motive for ending the tenancy, and they are not trying to avoid obligations under the RTA and MHPTA or the tenancy agreement.

In *Gallupe v. Birch*, 1998 CanLII 1339, the British Columbia Supreme Court states:

[35] I conclude from the observations of Taylor J.A. and Melvin J. that a consideration of dishonest motive or purpose is a matter that should be undertaken in a consideration of the good faith of a landlord in serving an eviction notice under s. 38(3). When the question of good faith is put in issue by a tenant, the arbitrator (or panel, if on a review) should consider whether there existed a fundamentally dishonest motive or purpose that could affect the honesty of the landlord's intention to occupy the premises. In such circumstances, the good faith of a landlord may be impugned by that dishonest motive or purpose.

Based on the tenant's undisputed testimony, I find the landlord asked to increase rent in October 2021, the landlord served the one month notice in November 2021 and served

the 2 month notice two days after the March 22, 2022 RTB decision that cancelled the one month notice.

I find the landlord's testimony was vague and not convincing. The landlord did not provide details or an explanation why her parents plan to move to the rental unit now. The landlord affirmed that "circumstances have changed" after she served the one month notice in November 2021, but the May 13, 2022 email sent to the contractor indicates that the landlord's parents "have been planning to move to our condo in downtown since November last year".

I find the May 13, 2022 estimate and email do not prove, on a balance of probabilities, that the landlord's parents plan to occupy the rental unit, as these documents are only an estimate and an email regarding improvements the landlord intends to do in the rental unit.

Considering that the landlord served the 2 month notice 2 days after the RTB issued a decision cancelling the one month notice and considering the landlord's contradiction in the May 13, 2022 email, I find the landlord served the 2 month Notice with ulterior motives.

Accordingly, I cancel the 2 month notice.

As the tenant was successful in this application, pursuant to section 72 of the Act, I authorize the tenant to recover the \$100.00 filing fee.

Conclusion

The March 23, 2022 2 month Notice is cancelled and of no force or effect. This tenancy will continue in accordance with the Act.

Pursuant to section 72(2)(a) the tenant is authorized to deduct \$100.00 from a future rent payment to recover the filing fee.

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: June 14, 2022