



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNL, MNDCT, RR, DRI, RP, LRE, PSF, OLC, LAT**

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 (the "2 Month Notice") pursuant to section 49;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65;
- an order regarding a disputed additional rent increase pursuant to section 43;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to change the locks to the rental unit pursuant to section 70.

Both parties attended the hearing and were given an opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlords were represented by a family member (the "Landlord"). In accordance with the *Act*, Residential Tenancy Rule of Procedure 6.1 and 7.17 and the principles of fairness and the Branch's objective of fair, efficient and consistent dispute resolution process parties were given an opportunity to make submissions and present evidence related to the claim. The parties were directed to make succinct submissions, and pursuant to my

authority under Rule 7.17 were directed against making unnecessary submissions or remarks not related to the matter at hand.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an application must be related to each other and the Arbitrator may dismiss unrelated disputed with or without leave to reapply. In the present case, I find that the pressing issue is the Notice to End Tenancy and the other portions of the application are not sufficiently related to that issue. Therefore, I sever and dismiss all of the tenant's application save their dispute of the 2 Month Notice to End Tenancy.

Issue(s) to be Decided

Should the 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 all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree on the following facts. This tenancy began on July 3, 2018. Monthly rent was originally \$850.00 and a security deposit of \$425.00 was collected at the start of the tenancy. The rental unit is a suite on a property with four units. The landlords occupy one of the suites and the remaining two are rented out to other occupants.

The landlord issued a 2 Month Notice dated February 27, 2022 which the tenants confirm receiving on that date. The tenants filed their application for dispute resolution on March 13, 2022. The reason provided on the notice for the tenancy to end is that the suite will be occupied by the landlord or the landlord's spouse. During the hearing the

Landlord testified that the person who resides in the rental unit may possibly be a child of the landlord but in any event it would be a close family member.

The landlords provided written submission in support of their position stating in part:

My parents are asking for the tenant to end the tenancy with a 2-month notice, so that they may use the suite for their personal use. My mom has been in cancer remission for the last 5 years and there is very recently new indication of possibility of recurrence, and she is currently undergoing active testing with a very real possibility of having to undergo chemotherapy again. She wants to be able to have a family member close by during this time, this member would live in the suite.

The landlords continue to write in their submissions:

As you are aware, the tenants have also taken audio recordings of them in their own home without their consent. Every time this occurred, they first came and had a heated discussion with my parents and then went away and came back to record while being very aware of what they were saying at the time while my parents were not even aware that their privacy was being breached inside their own home. My parents now are afraid to have any conversations with them, as they do not know when they maybe recording their conversations.

In addition, the tenants are very noisy. They have loud arguments with each other at all times of the day and my parents are forced to have to listen to screaming and arguing as all of this can be heard in their family room because the suite is on the main floor adjacent to their area.

The landlord said that they have chosen to end the tenancy for this rental unit while allowing the other occupants to continue residing in the remaining rental suites.

Analysis

Section 49(8)(a) of the *Act* provides that upon receipt of a notice to end tenancy for landlord's use of property issued under subsection (3) or (4) the tenant may, within fifteen days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

In the present case I accept the evidence of the parties that the tenants were served with the 2 Month Notice on February 27, 2022 and filed their application to dispute on March 13, 2022, within the 15 days provided under the *Act*. I find the tenant's submission that they have not been served with the notice as they did not receive additional informational pages to not be supported in the evidence as they have submitted a copy of the complete 2 Month Notice into their own evidence.

When a tenant files an application to dispute a Notice to End Tenancy, the landlord bears the burden to prove the grounds for the 2 Month Notice. The landlords provided two typewritten pages of submissions in support of their intended use. The landlords made reference to health reasons motivating their actions but provided no medical documents, doctor's notes or other materials supporting their submissions. The landlords provided no cogent reason why this rental unit was chosen when there are two other units on the property. Much of the landlords' evidence consists of their grievances with the tenants' conduct and detailing interactions which they find to be stressful and anxiety inducing.

Based on the paucity of the landlord's evidence, I find the landlord has failed to satisfy the burden of proof on a balance of probabilities. I am not satisfied that the landlord intends to occupy the rental unit as detailed on the 2 Month Notice. Their own testimony at the hearing contradicts the information provided on the notice, stating that it may not be the landlord or their spouse but other family members.

Additionally, I find the reference to the ongoing interactions between the parties and the landlord's expressed frustrations to demonstrate that there are other motivations for ending the tenancy. The landlords failed to provide a cogent, convincing reason why this particular rental unit was selected to occupy when there are other units on the property.

Based on the foregoing, I find the landlord has not met their evidentiary burden and I therefore allow the tenants' application to cancel the 2 Month Notice.

Conclusion

The 2 Month Notice is cancelled and of no further force or effect. This tenancy continues until ended in accordance with the *Act*.

The balance of the application is dismissed 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: June 28, 2022

Residential Tenancy Branch