



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant April 13, 2022 (the “Application”). The Tenant applied as follows:

- To dispute a Two Month Notice to End Tenancy for Landlord's Use of Property dated April 11, 2022 (the “Notice”)
- To recover the filing fee

The Tenant appeared at the hearing with the Translator. The Landlord appeared at the hearing with their fiancé. I explained the hearing process to the parties who did not have questions when asked. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

The Landlord confirmed receipt of the hearing package and Tenant’s evidence and confirmed there are no issues with service.

The Tenant testified that they did not receive evidence from the Landlord. The Landlord advised that they did not serve their evidence on the Tenant because it contained personal information. I found the Landlord failed to comply with rule 3.15 of the Rules. I heard the parties on whether the evidence should be admitted or excluded. The Tenant submitted that the evidence should be excluded because they did not receive it. The Landlord submitted that the evidence should be admitted and said they have copies of

the evidence. Pursuant to rule 3.17 of the Rules, I excluded the Landlord's evidence as I found it would be unfair to admit it when the Tenant had not seen it and could not respond to it.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the relevant evidence provided. I will only refer to the evidence I find relevant in this decision.

I note that the Landlord exited the conference call a few times during the hearing without warning and advised it was a phone issue on their end.

Issues to be Decided

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, should the Landlord be issued an Order of Possession?
3. Is the Tenant entitled to recover the filing fee?

Background and Evidence

A written tenancy agreement was submitted. The tenancy started July 01, 2021, and was for a fixed term ending July 01, 2022. Rent is \$1,700.00 per month due on the first day of each month. The Tenant confirmed the written tenancy agreement in evidence is accurate. The Landlord had exited the conference call when I was addressing the tenancy agreement between the parties.

The Notice was submitted. The grounds for the Notice are:

The rental unit will be occupied by the Landlord or the Landlord's close family member.

The Notice states that the rental unit will be occupied by the Landlord or the Landlord's spouse.

There was no issue that the Notice was sent to, and received by, the Tenant April 12, 2022.

The Landlord testified as follows. They want to move back into their apartment for several reasons. They have owned the rental unit since May 15, 2021, and have never lived in it. They live downtown because they worked downtown and did not have a car; however, they got a new job that allows them to work from home and therefore they no longer need to live downtown. They had an interview for their new job April 01, 2022, and were told April 11, 2022, they were going to be hired. They signed the contract for their new job July 15, 2022. Under their current tenancy agreement, they must pay extra for guests who stay more than two weeks. Their father plans to come stay with them for over one month and their landlord said they would have to pay more rent because of this. They felt their best option was to move back into the rental unit. They recently got engaged and are presently out of the country. They plan to move into the rental unit with their fiancé because otherwise they will be paying more to continue renting downtown.

The Tenant disputed that the Landlord acted in good faith in issuing the Notice and testified as follows. Prior to signing the tenancy agreement, the Landlord assured the Tenant the Landlord would not be moving back to the apartment for at least six years because the Landlord lives downtown. The tenancy agreement was to become a month-to-month tenancy after the fixed term which shows the parties understood this would be a long-term tenancy. The Landlord emailed the Tenant April 10, 2022, about signing a new tenancy agreement with a higher rent amount. The Tenant explained to the Landlord that a new tenancy agreement was not required and explained the rent increase rules. Around 10 hours later, the Landlord sent the Tenant the Notice. The Landlord issued the Notice because the Tenant would not agree to the higher rent amount on the newly proposed tenancy agreement. Further, the Landlord left the Tenant voice messages, which have been translated and are in evidence, which support that the Landlord did not issue the Notice in good faith.

In reply, the Landlord provided testimony about a microwave in the rental unit breaking due to overuse and increasing rent in the newly proposed tenancy agreement because of this. The Landlord testified about the Tenant's mother calling the Landlord repeatedly about the microwave issue. The Landlord noted that the rental unit was rented to the Tenant alone and yet both the Tenant's parents are staying in the unit. The Landlord also testified that they do not feel safe and want to move back into their apartment because the Tenant's father has phoned them and used threatening and abusive language. The Landlord testified that they did not know about the rent increase provisions in the *Residential Tenancy Act* (the "Act") until the Tenant mentioned them.

The Tenant submitted documentary evidence which I have reviewed and will refer to below as necessary.

Analysis

The Notice was issued pursuant to section 49(3) of the *Act* which states:

(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.

The good faith requirement is explained in RTB Policy Guideline 2A at pages 1 to 2.

Pursuant to section 49(8)(a) of the *Act*, the Tenant had 15 days to dispute the Notice. I find the Tenant received the Notice April 12, 2022, and disputed the Notice April 13, 2022, within time.

The Landlord has the onus to prove the grounds for the Notice pursuant to rule 6.6 of the Rules. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

I am not satisfied based on the evidence provided that the Landlord has proven the grounds for the Notice.

The parties take conflicting positions about whether the Landlord intends in good faith to occupy the rental unit and there is no admissible evidence before me from the Landlord to support their testimony on this point.

Further, the Landlord asserts that one of the reasons for issuing the Notice was getting a new job that allows them to work from home; however, the Landlord did not finalize the new job until July 15, 2022, well after the Notice was issued. I find this timeline calls into question the Landlord's stated reasons for issuing the Notice.

As well, the Tenant submitted documentary evidence showing the Landlord emailed the Tenant April 10, 2022, attaching the newly proposed tenancy agreement with a rent increase of \$100.00. In the email, the Landlord states, "If I don't receive the signed contract by the end of tomorrow, I will assume that you are not interested in renting the place **and will start looking for a new tenant** (emphasis added)." The evidence shows the Tenant explained to the Landlord April 11, 2022, that there was no need for a new tenancy agreement, that they would continue their tenancy and that the Landlord had to increase rent in accordance with the guidelines for doing so. The evidence shows the Landlord immediately issued the Notice April 11, 2022, and a corrected version April 12, 2022. I find the content and timing of the emails do raise a valid question about whether the Landlord issued the Notice in good faith and whether the Landlord intends to occupy the rental unit as stated.

Finally, the Tenant submitted evidence of the Landlord leaving the Tenant voice messages April 26 and 28, 2022, which do tend to call into question the Landlord's purpose in issuing the Notice.

In summary, I find the Tenant has raised issues, supported by evidence, which call into question the good faith of the Landlord and the Landlord's stated intention to move into the rental unit. In contrast, there is no admissible evidence before me from the Landlord to support the Landlord's testimony about their intentions in relation to the rental unit. Given the lack of evidence to support the Landlord's testimony, I find the Landlord has failed to prove the Notice was issued in good faith and failed to prove the grounds for the Notice.

Given the above, the Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

Given the Tenant was successful in the Application, I award them \$100.00 as reimbursement for the filing fee pursuant to section 72(1) of the *Act*. Pursuant to section 72(2) of the *Act*, the Tenant can deduct \$100.00 from their next rent payment.

Conclusion

The Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

The Tenant can deduct \$100.00 from their next rent payment.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: August 16, 2022

Residential Tenancy Branch