



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, RR, 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 (the 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;
- an order to allow the tenant(s) to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 65; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

The tenants participated in the teleconference, the landlord did not. The tenants gave sworn testimony and provided documentation to show that they served the landlord the Notice of Hearing Package, Application and Two Month Notice to End Tenancy for Landlords Use of Property on May 4, 2022 by registered mail. The tenants served the landlord a second time by registered mail and included the tenancy agreement on May 6, 2022. The tenants provided documentation that the packages were returned to them unclaimed by the landlord. Pursuant to sections 89 and 90 of the *Act* I find that the landlord is deemed to have been served five days later on May 9, 2022 and May 11, 2022. The hearing proceeded and concluded on this date. The tenant was given full opportunity to present their evidence, call witnesses and to make submissions and arguments.

Preliminary Issue – Severance of Application

Residential Tenancy Branch (RTB) Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claims regarding the Two Month Notice and the continuation of this tenancy are not sufficiently related to any of the tenant's other claims to warrant that they be heard together. The parties were given a priority hearing date in order to address the question of the validity of the Notice to End Tenancy.

The tenant's other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the Notice to End Tenancy. I exercise my discretion to dismiss the tenant's monetary claim with leave to reapply and only address the cancellation of the notice to end tenancy, an order to have the landlord comply and recovery of the filing fee for this application. It is worth noting that the tenant was premature in asking for a monetary order/ rent reduction as many of her calculations were done at the hearing and insufficient notice and service of those claims and documents to the landlord.

Issue(s) to be Decided

Should the Two Month Notice to End Tenancy be cancelled? If not, is the landlord entitled to an order of possession?

Are the tenants entitled to an order compelling the landlord to comply with the Act, regulation, or tenancy agreement?

Are the tenants entitled to the recovery of the filing fee for this application from the landlord?

Background and Evidence

KL gave the following testimony on behalf of the tenants. KL testified that the tenancy began on January 1, 2018 with the monthly rent of \$1100.00 due on the first day of the month. KL testified that on April 7, 2022 the landlord issued a Two Month Notice to End Tenancy for Landlords Use of Property. The reason noted for the notice was that the landlord or close family member would be moving in. KL testified that she does not believe a family member would be moving in as this notice was issued to her one week

after refusing to agree to a 50% rent increase. KL testified that she believes the landlord will be re-renting the unit at a higher rate and has no intention of using it for personal use. KL requests that the notice be cancelled.

Analysis

The tenant has called into question whether the landlord has issued the notice in good faith. Residential Tenancy Policy Guideline 2 addresses the “good faith requirement” as follows.

Good faith is an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage.

A claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End the Tenancy. This might be documented through:

a Notice to End Tenancy at another rental unit;

an agreement for sale and the purchaser’s written request for the seller to issue a Notice to End Tenancy; or

a local government document allowing a change to the rental unit(e.g., building permit) and a contract for the work.

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 they do not have an ulterior motive for ending the tenancy.

The landlord did not participate in the teleconference or submit any documentation for this hearing. Based on the undisputed testimony of KL, I hereby cancel the Two Month Notice to End Tenancy for Landlords Use of Property dated April 7, 2022.

The tenants are entitled to a one time rent reduction of \$100.00 from the rent due September 1, 2022 for the full recovery of the filing fee.

The tenant did not provide sufficient evidence to be granted a specific order to have the landlord comply with the Act, regulation or tenancy agreement, accordingly; I dismiss that portion of their application.

Conclusion

The Two Month Notice to End Tenancy for Landlords Use of Property dated April 7, 2022 is cancelled, it is of no effect or force, the tenancy continues.

The tenants are entitled to retain \$100.00 from the rent due for September 1, 2022 in full satisfaction and recovery of the filing fee.

The tenants request for a rent reduction/ monetary order is dismissed with leave to reapply.

The tenants request to have the landlord comply with Act is dismissed without 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: August 22, 2022

Residential Tenancy Branch