



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LRE, FFT, CNL

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 to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

The landlord confirmed receipt of the tenant's application for dispute resolution ('application'). In accordance with section 89 of the *Act*, I find that the landlord duly served with the tenant's application. As both parties confirmed receipt of each other's evidentiary materials, I find that these documents were duly served in accordance with section 88 of the *Act*.

As the tenant confirmed receipt of the 2 Month Notice dated May 12, 2022, I find the tenant duly served with the 2 Month Notice.

Issues 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 to suspend or set conditions on the landlord's right to enter the rental unit?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background

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 1, 2015, with monthly rent currently set at \$1,680.00, payable on the first of the month. The landlord collected a security deposit in the amount of \$800.00, which they still hold. The tenant still resides in the home.

The landlord issued the 2 Month Notice dated May 12, 2022, with an effective move-out date of July 31, 2022 for the following reason:

- The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse.

The landlord provided the following background for why they had decided to issue the 2 Month Notice. The landlord testified that they required the rental unit for their children, who are attending university near the rental home. The landlord provided proof of enrollment in their evidentiary materials for two of their children. The landlord also provided updated driver's licenses for their children with the rental address. The landlord testified that they had purchased the home last year, and noted that they had "gave [the tenant] a really good deal" with "utilities so high". The landlord noted that they did not change any of the terms of the tenancy agreement, and that the tenant was "enjoying low rent".

The landlord testified that they have four adult children, and that their two daughters would be moving into the tenant's suite, which is the upper suite. The landlord had also served the lower tenant with a 2 Month Notice for landlord's use, which the lower tenant disputed as well. The lower tenant JF attended the hearing as a witness. The landlord testified that two of the daughters would be moving into the upper unit. The landlord's daughter LC testified that the home was purchased for the children to reside in.

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.”

Although the landlord stated that they had issued the 2 Month Notice in order for their children to move in, I find that the tenant had raised doubt as to the true intent of the landlord in issuing the 2 Month Notice. The burden, therefore, shifts to the landlord to establish that they do not have any other purpose to ending this tenancy.

Although the landlord and one of the daughters attended the hearing to confirm why they required the tenant's rental unit, I find that the testimony and evidence provided by the landlord raised considerable doubt as to the credibility of these statements. The landlord's own testimony in the hearing was that the tenant was given a “really good deal” after the landlord had purchased the home as the landlord did not change any of the terms in the tenancy agreement. I note for future reference that the original terms of the agreement cannot be changed without mutual agreement of both parties, and that this is in fact not a favour, but an obligation of the landlord to continue the tenancy on the same terms unless ended or changed in accordance with the *Act*.

I also note that the change of address on a driver's license does not necessarily indicate proof of residency, and that the driver's license holder bears the responsibility of changing one's address within 10 days of moving. In this case, I find the change of

address to be premature considering that both Notices were disputed, and before the RTB awaiting a decision from an Arbitrator.

Furthermore, although the landlord provided proof of enrollment in the local university, I do not find that this evidence is sufficient to support why the landlord required at least two units in the house for their children. It is undisputed that the landlord had also served the tenant upstairs with a similar Notice to End Tenancy.

As noted earlier, the onus is on the landlord and not on the tenant to establish whether or not the 2 Month Notice was issued in good faith. I find that the landlord has not met their burden of proof to show that the 2 Month Notice was issued in good faith. I find that the testimony of both parties during the hearing as well as the evidence presented raised questions about the landlord's true intentions in ending this tenancy, and the evidence and statements do not sufficiently satisfy me that the true reason for ending this tenancy is for the children to move in.

Accordingly, I allow the tenant's application to cancel the 2 Month Notice. The landlord's 2 Month Notice, dated May 12, 2022, is hereby cancelled and is of no force and effect. This tenancy is to continue until it is ended in accordance with the *Act*.

I note that the tenant had also filed an application for an order to suspend or set conditions on the landlord's right to enter the property. I do not find any further orders are necessary at this time, and therefore this portion of the application is dismissed with leave to reapply.

I allow the tenant 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 May 12, 2022, is cancelled and is of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

I issue a \$100.00 Monetary Order in favour of the tenant for recovery of the filing fee. I allow the tenant to implement the above monetary award by reducing future monthly rent payments until the amount is recovered in full.

The tenant's application to suspend or set conditions on the landlord's right to enter the rental unit 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: September 1, 2022

Residential Tenancy Branch