



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDCT, OLC, FFT

Introduction

The Tenants seek the following relief under the *Residential Tenancy Act* (the “Act”):

- an order pursuant to s. 49 cancelling a Two-Month Notice to End Tenancy (the “Two-Month Notice”);
- an order for monetary compensation pursuant to s. 67;
- an order pursuant to s. 62 that the Landlord comply with the *Act*, Regulations, and/or the tenancy agreement; and
- return of their filing fee pursuant to s. 72.

S.A. appeared as the Tenant. B.K. appeared as the Landlord but was not affirmed and did not provide evidence as his son, K.K., spoke on his behalf as agent. K.K. was joined by his mother, S.K..

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The Landlord’s agent advised that the Two-Month Notice was served on the Tenant at first by way of text message and then in paper a few days later. The Landlord’s agent says that the Two-Month Notice was served on June 30, 2022. The Tenant acknowledges receipt of the Two-Month Notice, though indicates that he first received a text message on April 30, 2022 of the Landlord’s notice to end the tenancy. The Tenant further stated that he received the Two-Month Notice some days later in early May 2022. Based on the Tenant’s acknowledged receipt, I find that pursuant to s. 71(2) of the *Act* the Two-Month Notice was sufficiently served on the Tenant, who received it in early May 2022.

The Tenant advised that he served the Notice of Dispute Resolution and his evidence on the Landlord, which was acknowledged to have been received by the Landlord. Pursuant to s. 71(2) of the *Act*, I find that the Tenant's application materials were sufficiently served on the Landlord.

The Landlord's agent advised that the Landlord's response evidence was sent to the Tenant via text message. The Tenant acknowledges receipt of the Landlord's evidence but indicated that it was received approximately three days ago. The Landlord's agent confirmed this was correct.

I advised the parties of Rule 3.15 of the Rules of Procedure, which requires respondents to serve their evidence at least 7 days prior to the hearing. Text message is not an approved form of service under either s. 88 or 89 of the *Act*. I asked the Tenant if he had any objections to including the evidence, despite the method of service and it being served late. The Tenant consented to the inclusion of the evidence despite the Landlord's failure to properly serve their evidence.

Based on the Tenant's acknowledged receipt of the Landlord's evidence and on his consent to its inclusion despite the method and timing of service, I find that pursuant to s. 71(2) of the *Act* the Landlord's evidence was sufficiently served on the Tenant.

Preliminary Issue – Tenants' Claim

Upon review of the Notice of Dispute Resolution the description of the Tenants' claim to cancel the Two-Month Notice is replicated under their claim under s. 62 of the *Act* that the Landlord comply. I confirmed that this was the case with the Tenant at the outset of the hearing. As the claim is a replication of the primary claim that the Two-Month Notice be cancelled, I dismiss the Tenant's claim under s. 62 without leave to reapply.

Issues to be Decided

- 1) Should the Two-Month Notice be cancelled?
- 2) Is the Landlord entitled to an order of possession?
- 3) Are the Tenants entitled to a monetary claim?
- 4) Are the Tenants entitled to the return of their filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The parties confirmed the following details with respect to the tenancy:

- The Tenants took occupancy of the rental unit on April 6, 2018.
- Rent of \$1,000.00 was payable on the first day of each month.
- A security deposit of \$500.00 was payable as a security deposit by the Tenants.

A copy of the tenancy agreement was put into evidence. Despite confirming the date of the beginning of the tenancy at the outset of the hearing, the Landlord's agent later argued that he was uncertain when the tenancy began.

The parties described the rental unit as a basement suite within a single detached home. I was further advised that there are two basement rental units: the subject rental unit, which has one-bedroom, and an adjacent two-bedroom basement rental unit. The parties further advised that the Landlord recently purchased the property and live in the upper portion of the house. The Landlord's evidence includes a buyer's statement of adjustment showing the Landlord took possession of the rental unit on May 27, 2021.

The Landlord's agent argued that the Two-Month Notice was served on the Tenant as there was a family wedding taking place in the summer of 2022. A copy of the Two-Month Notice was put into evidence by the Tenants and shows that it was issued on the basis that the rental unit would be occupied by the Landlord's child or spouse. It also shows that the Landlord is a family corporation and a person owning voting shares in the corporation, or a close family member, intends to occupy the rental unit.

I was told by the Landlord's agent and S.K. that S.K.'s aunt and uncle were visiting from overseas for some months for the wedding. The Landlord's evidence includes a flight itinerary showing and arrival on June 23, 2022 and a departure on October 1, 2022. The Landlord's agent says that since the aunt and uncle could not move into the rental unit due to the dispute, they are residing with other family members.

The Landlord's agent further testified that he is getting married in 2024 and that he and his fiancé intend on moving into the basement rental unit in the fall of 2022. The Landlord's agent says he lives in the upper portion of the property with his family.

The Tenant alleges that the notice was served in bad faith and argues that it is not proper to end a tenancy for family members to temporarily reside within the rental unit for a wedding. The Tenant says the wedding took place in early July 2022 and is now over. The Tenant further testified that the adjacent rental unit was rented to new tenants on May 1, 2022. The Tenant argued that his rental unit was targeted and that the Landlord wants more rent. The Tenant testified that the Landlord offered to withdraw the Two-Month Notice if the Tenant agreed to pay more rent.

The Landlord's agent confirmed that the adjacent rental unit was rented beginning on May 1, 2022 but argued that the rental unit was too large for their needs and that the two-bedroom rental unit generates higher rent.

The Tenant claims the return of \$500.00 he says he paid to the Landlord as a security deposit after they purchased the residential property. The Tenant says he paid \$500.00 as the security deposit to the previous owner and paid an additional \$500.00 cash to the current Landlord 5 or 6 months ago when they requested the amount. The Tenant says he paid it rather than risk the discord from denying the additional \$500.00.

The Landlord's agent confirmed that they received \$500.00 cash from the Tenant, though argued that the Landlord did not receive the security deposit from the previous owner when they purchased the property. The Landlord's agent intimated that the Tenant did not pay a security deposit to the previous owner as there was a familial relationship.

Analysis

The Tenant seeks an order cancelling the Two-Month Notice and for return of \$500.00 paid as a security deposit.

Pursuant to s. 49(3) of the *Act*, a landlord may end a tenancy with two months notice where the landlord or a close family member intends, in good faith, to occupy the rental unit. Section 49(1) of the *Act* defines a close family member as an individual's parents, spouse, or child or the parent or child of that individual's spouse. When a tenant receives a notice issued under s. 49(3) of the *Act*, they may either accept the end of the tenancy or may file an application disputing the notice within 15 days of receiving it as required under s. 49(8).

I have reviewed the information on file and in consideration of when the Two-Month Notice was received, I find that the Tenants filed to dispute the notice within the 15-days permitted to them under s. 49(8).

The Landlord served the Two-Month Notice on the basis that it would be occupied by their child or spouse. In this instance, the Landlord indicates that it was to be occupied by S.K.'s aunt and uncle for a wedding. I find that the Landlord has failed to demonstrate the good faith intention of the Landlord's child or spouse to occupy the rental unit and that the aunt and uncle do not fit within the rationale given by the Two-Month Notice. Further, the *Act* does not contemplate ending tenancies at all on the basis that it would be occupied by an aunt or uncle as neither are considered a "close family member" as per s. 49(1).

I would further note that the Landlord's evidence shows that the aunt and uncle are leaving on October 1, 2022. Though not stated within s. 49 of the *Act*, there is an additional requirement that the rental unit be used for the stated purpose for at least six months, failing which the Tenants would be entitled to compensation under s. 51(2) of the *Act*. The 6-month requirement is made clear by Policy Guideline #2A when it states the following:

The onus is on the landlord to demonstrate that they plan to occupy the rental unit for at least 6 months and that they have no dishonest motive.

Even if the aunt and uncle could classify as close family members, which they cannot, they would not meet the 6 month window from the effective date of the notice.

Looking broadly at the argument that the Landlord's son would occupy the rental unit, I am told by the son that this would occur in the fall of 2022. However, the effective date as listed in the Two-Month Notice is June 30, 2022. Again, s. 51(2) of the *Act* carries a requirement that the stated purpose of the notice under s. 49 be fulfilled within a reasonable time after its effective date. Taking occupancy at least three months after the effective date of the notice does not qualify as a reasonable time. I find that the Two-Month Notice, if it was issued on the basis that the son would move into the rental unit, was issued prematurely if that was the case.

Further, the Tenant argued that the Landlord offered to withdraw the Two-Month Notice if he agreed to pay more rent. The Landlord's agent did not dispute this. The Landlord's agent further stated that the two-bedroom rental unit was not occupied, at least in part,

due to the ability to get more rent from the adjacent rental unit. I accept that there is likely an ulterior motive by the Landlord when serving the Two-Month Notice.

I find that the Landlord has failed to satisfy their onus to show that they issued the Two-Month Notice in good faith. Accordingly, I grant the Tenants claim and cancel the Two-Month Notice, which is of no force or effect.

Looking next at the issue of the security deposit, s. 93 of the *Act* provides that a landlord's obligations with respect to the security deposit runs with the land or reversion. In simple language, this means that the obligation for the security deposit transfers with ownership. Further, s. 19(1) of the *Act* limits a security deposit, if requested by the landlord, to no more than half a month's rent payable under the tenancy agreement.

The parties confirm that the Tenant paid \$500.00 cash after the current Landlord took possession of the property. The Landlord disputes that the Tenant paid a security deposit to the previous owner. I am not persuaded by the Landlord's allegation. There is no dispute the tenancy began prior to Landlord taking possession of the rental unit. The tenancy agreement clearly shows the Tenant paid a security deposit of \$500.00. The Tenant testified to paying the security deposit to the previous owner. The Landlord raises a bare allegation that the security deposit had not previously been paid, one that I find is wholly unsubstantiated and without merit.

The Landlord says they never received the security deposit from the previous owner. The Landlord's failure to account for the \$500.00 security deposit when they purchased the property is not the Tenants' problem. The Tenants should not be penalized for the Landlord's failure to take this into account when the property was purchased.

I find that the Landlord, who inherited the rights and obligations to the security deposit from the previous owner, should not have requested or collected the additional \$500.00 from the Tenant. This is in breach of s. 19(1) of the *Act*. I find that the Tenants overpaid the security deposit by \$500.00. I further find that s. 19(2) of the *Act* is triggered, which permits tenants to deduct the overpayment of the security deposit from their rent obligation. Accordingly, I direct that the Tenant withhold \$500.00 from rent on one occasion to account for the overpayment of the security deposit.

Conclusion

I hereby cancel the Two-Month Notice, which is of no force or effect. The tenancy shall continue until ended in accordance with the *Act*.

The Tenants have demonstrated that the Landlord received a security deposit in contravention of s. 19(1) of the *Act*. Pursuant to s. 19(2) of the *Act*, I direct that the Tenants deduct \$500.00 from rent on one occasion to recover the overpayment.

I find that the Tenants were successful in their application and are entitled to their filing fee. Pursuant to s. 72(1) and 72(2), I order that the Tenants withhold \$100.00 from rent payable to the Landlord on one occasion in full satisfaction of their 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: September 18, 2022

Residential Tenancy Branch