



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for cancellation of the Two Month Notice to End Tenancy for Landlord's Use (the Notice), issued pursuant to section 49.

Both parties attended the hearing. The tenant was assisted by advocate HB. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing all the parties were clearly informed of the Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits the recording of a dispute resolution hearing. All the parties confirmed they understood the Rules of Procedure.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5,000.00."

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with section 89 of the Act.

I note that section 55 of the Act requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the Act.

Issues to be Decided

Is the tenant entitled to cancellation of the Notice?

If the tenant's application is dismissed, is the landlord entitled to an order of possession?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenant's claim and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlord's obligation to present the evidence to substantiate the Notice.

The tenant affirmed the tenancy started in February 2007. Both parties agreed that monthly rent today is \$380.00, due on the first day of the month. The landlord collected and holds a security deposit of \$100.00.

Both parties agreed the landlord served the Notice in person on May 13, 2022.

A copy of the Notice was provided. The Notice is dated May 13, 2022 and the effective date is July 01, 2022. It states: "the rental unit will be occupied by the landlord or the landlord's close family – the landlord or landlord's spouse and the father or mother of the landlord or landlord's spouse". The landlord stated that he plans to occupy the rental unit alone and he indicated by mistake in the Notice that his father will occupy the unit.

The tenant submitted this application on May 16, 2022 and continues to occupy the rental unit.

The tenant's application states:

My landlord told me in February of this year that he wanted to raise my rent from \$375.56 per month to \$550.00 per month. When I did not agree to that, he gave me a Notice of Rent Increase dated Jan 15/22 but gave it to me in March 2022. I started paying the increased amount of \$380.83 on May 1, 2022. On May 13/22 my landlord gave me a two month notice for landlord use of property. He indicated that the landlord or the landlord's spouse and the father or mother of the landlord or landlord's spouse would be occupying the unit. I believe I was given this notice in bad faith because I didn't agree to the excessive rent increase. This is a very tiny bachelor suite and I

don't believe the landlord plans in good faith to occupy it. I do not believe I should be evicted. I have lived here since 2007.

The rental building has 4 rental units. The landlord purchased the rental building around 2010 and has not lived in the rental building.

The tenant testified that another rental unit in the rental building is empty and the landlord could move to the other unit. The landlord said the other unit is a 3 bedroom rental unit and he does not need to occupy a 3 bedroom unit, as he will live alone. The landlord affirmed that he renovated the larger unit and re-rented it. The landlord plans to occupy the tenant's rental unit, as this is a smaller unit and the landlord plans to "do some stuff in the tenant's unit". The landlord stated the tenant's unit contains a utility closet where the boiler and the electric panels for the entire building are located.

The landlord owned a business, which closed because of the pandemic. The landlord has been living in a trailer and he does not want to live in the trailer another winter. The landlord testified the tenant's rent is very cheap and the tenant has been living "pretty much rent free".

The landlord submitted the 2022 property tax for the rental building paid in July 2022 into evidence. It indicates that the landlord declared that he is occupying the rental unit.

The landlord said that the amount of property taxes that he saved by informing the city that he is occupying the rental unit is more money than what the tenant is paying for rent.

The landlord submitted his driver's license indicating that his address is the rental unit.

The landlord changed his address in the driver's license in August 2022 in order to have evidence to submit to this application.

I asked the landlord if there is any other reason that he served the Notice and his answer was negative.

The tenant affirmed that in early 2022 the landlord asked to increase rent to \$550.00 and the tenant did not agree. The landlord served a notice of rent increase dated January 15, 2022. It indicates that the last rent increase was on June 01, 2011 and that rent will increase from \$375.20 to \$380.83 on May 01, 2022.

The tenant stated the landlord served the Notice in bad faith because the tenant did not agree to pay rent in the amount of \$550.00 per month.

The landlord testified that he did not serve the Notice in retaliation because the tenant did not agree to the rent increase of \$550.00. The rental unit's market monthly rent is \$900.00. The landlord said that when he asked to increase the rent, as the tenant's rent is much lower than the market rate, the tenant told him: "That's your f problem".

Analysis

Section 49(8)(a) allows the tenant to dispute a 2 month Notice within 15 days after the date the tenant received it. As the tenant confirmed receipt of the Notice on May 13, 2022 and submitted this application on May 16, 2022, I find the tenant disputed the Notice within the timeframe of section 49(8)(a) of the Act.

Pursuant to Rule of Procedure 6.6, the landlord has the onus of proof to establish, on the balance of probabilities, that the Notice to end tenancy is valid.

RTB Policy Guideline 2A states that when issuing a notice under section 49 of the Act the landlord must demonstrate there is not an ulterior motive for ending the tenancy:

Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant, they do not have an ulterior motive for ending the tenancy, and they are not trying to avoid obligations under the RTA and MHPTA or the tenancy agreement.

In *Gallupe v. Birch*, 1998 CanLII 1339, the British Columbia Supreme Court states:

[35] I conclude from the observations of Taylor J.A. and Melvin J. that a consideration of dishonest motive or purpose is a matter that should be undertaken in a consideration of the good faith of a landlord in serving an eviction notice under s. 38(3). When the question of good faith is put in issue by a tenant, the arbitrator (or panel, if on a review) should consider whether there existed a fundamentally dishonest motive or purpose that could affect the honesty of the landlord's intention to occupy the premises. In such circumstances, the good faith of a landlord may be impugned by that dishonest motive or purpose.

I find the landlord sufficiently explained why he does not want to occupy the 3 bedroom rental unit.

I find the landlord's testimony about his plan was vague ("the landlord plans to 'do some stuff in the tenant's unit'").

The tenant's application indicates that the tenant does not believe the landlord served the Notice in good faith.

I accept the undisputed testimony that the landlord asked to increase rent from \$375.00 to \$550.00, the tenant did not agree to the rent increase and the landlord served the January 15, 2022 notice of rent increase, effective on May 01, 2022. The landlord served the Notice on May 13, 2022.

The landlord indicated that the tenant has been living "pretty much rent free" and that the rental unit's monthly market rate is \$900.00, almost triple the amount the tenant is paying.

The landlord initially did not provide details about the attempt to increase rent to \$550.00. Later the landlord agreed that he asked to increase rent to \$550.00.

The landlord did not provide details about his current living arrangement or why he does not want to spend another winter living in his current living arrangement.

I find the driver's license does not prove, on a balance of probabilities, that the landlord plans to occupy the rental unit. The landlord admitted that he changed his driver's license in August 2022 to have documentary evidence for this application.

I find that the 2022 property tax and the landlord's vague testimony are not enough evidence to prove, on a balance of probabilities, that the landlord intends to occupy the rental unit. The landlord served the Notice four months after he asked to increase rent from \$375.00 to \$550.00, the tenant submitted this application indicating that he does not believe the landlord acted in good faith and the landlord only admitted that he asked to increase rent in January 2022 to \$550.00 after the tenant provided testimony about the attempted rent increase.

Based on the above, I find that the landlord has not met the onus to prove, on a balance of probabilities, that he intends, in good faith, to occupy the rental unit. I find the Notice was issued with ulterior motives.

Accordingly, I cancel the Notice. This tenancy will continue until it is lawfully ended in accordance with the Act.

Conclusion

The May 13, 2022 Notice is cancelled and of no force or effect. This tenancy will continue in accordance with the Act.

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 27, 2022

Residential Tenancy Branch