



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, LRE, DRI

Introduction

This hearing convened to deal with the tenant's application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The tenant applied for an order cancelling the Two Month Notice to End Tenancy for Landlord's Use of Property (Notice or 2 Month Notice) issued by the landlord, an order requiring the landlord to comply with the Act, regulations, or tenancy agreement, an order suspending or setting conditions on the landlord's right to enter the rental unit and to dispute a rent increase that is above the amount allowed by law.

The tenant and the landlord's spouse (agent) attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. Both parties were affirmed.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me. The parties confirmed receipt of the other's evidence.

I have reviewed all oral, written, and other evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced in this Decision. Further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters-

Rule 2.3 states claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply. authorizes me to dismiss unrelated disputes contained in a single application.

In this circumstance the tenant indicated several matters of dispute on the application, the most urgent of which is the application to cancel the 2 Month Notice. I find that not all the claims on the application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenant's request to cancel the 2 Month Notice. The balance of the tenant's application is dismissed, with leave to re-apply.

Leave to reapply is not an extension of any applicable time limit.

Issue(s) to be Decided

Should the 2 Month Notice be cancelled or upheld?

Background and Evidence

The testimony from the hearing showed a tenancy start date of June 1, 2017 for a monthly rent of \$1,800.

The evidence shows that the landlord issued the tenant the Notice on May 3, 2022, and the tenant confirmed receiving the Notice on May 4, 2022. The Notice listed an effective move-out date of July 31, 2022. Filed in evidence was a copy of the Notice.

The Notice listed as reason for ending the tenancy is that the rental unit will be occupied by the child of the landlord or landlord's spouse.

The tenant's application was filed within 15 days after service allowed by the Act to dispute the Notice.

Pursuant to section 7.18 of the Rules, the landlord proceeded first in the hearing to give evidence to support the Notice.

The agent submitted that tenant was issued the Notice because their daughter intended on moving into the rental unit. The landlord said that their daughter graduated from

university and wants the rental unit to have more independence. Currently their daughter is living in their basement unit. The agent submitted that their daughter also has full-time work now and intends on living in the rental unit.

The agent submitted that the tenant has been given plenty of notice that they wanted to take back the rental unit, as early as March 2022, but has failed to find a new place and leave. The landlord filed copies of some text messages between the parties.

Tenant's response –

The tenant wrote in her application the following:

Landlord messaged to increase rental to \$2100 on 3rd May 2022. I didn't agree, then he send me 2 month move out notice next day on 4th May 2022. I need enough time to find another appartement due to my personal condition and Covid-19 season. Because my disability son needs 24 hours to care giving, it caused me hard to go out to find new home.

[Reproduced as written]

The tenant said that the first time she heard about a family member moving in, that it was going to be the landlord's son. The tenant then said she was told she had to agree to a rent increase to \$2,100 for monthly rent. The tenant said they just discussed a rent increase the week prior to the hearing. The tenant submitted that the landlord is just making up a story.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Section 49 (3) of the Act states that 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.

When a tenant disputes a Two Month Notice to end tenancy, the landlord has the burden to prove that not only do they intend to use the rental unit for the stated purpose, but also that the Notice was given in good faith.

Rule 6.6 provides that the *“standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed”*.

Residential Tenancy Policy Guideline 2 provides 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 their obligations under the Act.

Upon review of the Two Month Notice to End Tenancy dated May 3, 2022, I find that Notice to be completed in accordance with the requirements of section 52 of the Act and I find that it was served upon the tenant in a manner that complies with section 88 of the Act.

Where 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 find the documentary evidence submitted by the parties is insufficient to support either position in this matter. The other evidence I find consisted of equally credible testimony from the parties with different versions of events. In that case, the party having the burden of proof must supply further evidence.

I find the landlord submitted insufficient evidence to show that their daughter truly intended to move into the rental unit as a living accommodation for at least 6 months after the effective date of the Notice. The daughter was not present at the hearing to provide direct testimony, nor were there supporting documents, such as records, an affidavit or statutory declaration. No evidence was submitted that the landlord's daughter resided at the landlord's home.

While the tenant raised the good faith intent as she submitted the 2 Month Notice was in response to the tenant's refusal of the rent increase, I find it is not necessary to consider the good faith of the landlord as there was insufficient evidence that the landlord's daughter truly intended to move into the rental unit as a living accommodation for at least 6 months.

As I have found that the landlord submitted insufficient evidence that their daughter intended to occupy the rental unit as a living accommodation, I **ORDER** that the 2 Month Notice dated May 3, 2022, for an effective move-out date of July 31, 2022, is cancelled, and it is of no force or effect. The tenancy will continue until it is ended in accordance with the Act.

Conclusion

The tenant's application has been granted as I have ordered the 2 Month Notice cancelled and is of no force or effect.

The tenancy will continue until ended in accordance with the Act.

The remaining claims on the tenant's application have been 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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: October 5, 2022

Residential Tenancy Branch