



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNQ, DRI, OLC, FFT

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a tenancy. On June 10, 2022, the tenants applied for:

- cancellation of a Two Month Notice to End Tenancy Because Tenant does not Qualify for Subsidized Rental Unit, dated June 6, 2022 (the Two Month Notice);
- dispute of a rent increase above the amount allowed by law;
- an order for the landlord to comply with the Act, regulation, and/or tenancy agreement; and
- the filing fee.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were also made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings, and Rule 7.4 requiring evidence to be presented.

The landlord confirmed he received the tenants' hearing materials and that he had not served or submitted responsive evidence.

Preliminary Matter

I dismiss, without leave to reapply, the tenants' application for an order for the landlord to comply with the Act, regulation, and/or the tenancy agreement, as I found the issues identified in this claim would be addressed in the tenants' claims to dispute the Two Month Notice and to dispute a rent increase.

Issues to be Decided

- 1) Are the tenants entitled to an order cancelling the Two Month Notice?
- 2) If not, is the landlord entitled to an order of possession?

- 3) Did the landlord implement a rent increase above the amount allowed by law?
- 4) Are the tenants entitled to the filing fee?

Background and Evidence

While I have considered the presented documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties agree the tenancy began June 14, 2019, and rent is now \$1,850.00, due on the first of the month. The tenants are disputing the \$50.00 rent increase. The parties agree the tenants paid a security deposit of \$900.00, which the landlord still holds.

The landlord testified they served the tenants with the Two Month Notice by registered mail on an unknown date in June or July, 2022. The tenants testified they received the Notice on June 7, 2022.

A copy of the Two Month Notice was submitted as evidence; it is signed and dated by the landlord, gives the address of the rental unit, states an effective date, states the grounds for ending the tenancy, and is in the approved form. The reason indicated for the Two Month Notice is: "The tenant no longer qualifies for the subsidized rental unit."

The landlord testified that he served the Two Month Notice on the tenants because the landlord's costs have gone up, including interest rates, mortgage payments, strata fees, sewage fees, and taxes, such that the landlord cannot afford to pay the mortgage.

The tenants testified they were unclear as to why the landlord had indicated the tenancy should end due to tenants no longer qualifying for a subsidized rental unit, as their rent was not subsidized. The tenants submitted they thought they received the notice to end tenancy because they refused when the landlord asked them to pay an additional \$350.00 in rent.

The tenants testified that when the tenancy began in June 2019, rent was \$1,800.00.

The tenants testified that a few weeks prior to the beginning of July 2021, the landlord asked them to sign a new tenancy agreement, and to pay an additional \$150.00 in rent. The tenants testified they said no to the proposed increase, but that they were willing to pay an additional \$50.00, bringing their rent to \$1,850.00.

The tenants submitted they are now disputing the increase, as the landlord did not provide a Residential Tenancy Branch (RTB) form or the notice period required by the Act. The tenants testified they were pressured to accept the increase.

The tenants testified that a few weeks prior to the end of June 2022, the landlord told them they could reapply to live in the unit for another year, at an increase of \$350.00 per month. The tenants testified that the landlord did not provide an RTB form notifying them of the increase. The tenants testified they offered to pay an additional \$100.00 a month, and that they agreed to sign a new tenancy agreement. The tenants testified they are also disputing this increase.

When asked for his response regarding rent increases, the landlord submitted that he did not want to lose the rental due to insolvency, and reiterated his prior testimony on how the costs associated with owning the property have gone up. The landlord testified that he is losing money each month, and that he has asked the tenants many times to increase the rent, but they have refused.

Analysis

Two Month Notice

Based on the testimony of the parties, I find the landlord served the tenant the Two Month Notice in accordance with section 88 of the Act, and that the tenants received it on June 7, 2022.

I find the Two Month Notice meets the form and content requirements of section 52.

The Two Month Notice was received by the tenants on June 7, 2022; pursuant to section 49.1(5), the application deadline was 15 days later. As the tenants applied to dispute the Notice on June 10, 2022, I find they met the deadline.

The standard of proof in a dispute resolution is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

As described in Residential Tenancy Branch Rule of Procedure 6.6, when a tenant applies to dispute a notice to end tenancy, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice is based.

Section 49.1 (2) of the Act permits a landlord to end the tenancy of a subsidized rental unit by giving notice to end the tenancy if the tenant or other occupant, as applicable, ceases to qualify for the rental unit.

Section 49.1 (1) defines a subsidized rental unit as follows:

"subsidized rental unit" means a rental unit that is

- (a) operated by a public housing body, or on behalf of a public housing body, and
- (b) occupied by a tenant who was required to demonstrate that the tenant, or another proposed occupant, met eligibility criteria related to income, number of occupants, health or other similar criteria before entering into the tenancy agreement in relation to the rental unit.

The landlord has provided affirmed testimony that he served the Two Month Notice on the tenants as his costs associated with owning the rental have gone up and he can no longer afford the mortgage. The landlord has not submitted evidence demonstrating that the rental unit is a subsidized unit as defined in the Act.

The tenants have testified that their rent is not subsidized.

Based on the evidence before me, and on a balance of probabilities, I find the landlord is not entitled to an order of possession, because the landlord has failed to prove the reason indicated on the Two Month Notice: that the tenants no longer qualify for a subsidized rental unit.

Therefore, the Two Month Notice is cancelled; the tenancy will continue until it is ended in accordance with the Act

Rent Increase

Section 42(3) of the Act states that a notice of a rent increase must be in the approved form. The approved form is the RTB [Notice of Rent Increase](#) document.

Section 43 of the Act states:

- 43** (1) A landlord may impose a rent increase only up to the amount
- (a) calculated in accordance with the regulations,

- (b) ordered by the director on an application under subsection (3), or
- (c) agreed to by the tenant in writing.

...

- (5) If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.

The tenants testified that rent was \$1,800.00 at the beginning of the tenancy; this was not disputed by the landlord.

The tenants testified that the landlord has not implemented a rent increase using the RTB form, as required by section 42 of the Act.

There is no evidence before me that the tenants agreed in writing to a rent increase.

The landlord has submitted that he is faced with rising costs, and that he has asked the tenants multiple times to pay additional rent, but they have refused.

Based on the foregoing, I find, on a balance of probabilities, that the landlord has not imposed a rent increase in accordance with the Act. Therefore, I find that rent in the tenancy is \$1,800.00 a month.

In accordance with section 43(5) of the Act, the tenants are authorized to deduct from future rent payments any additional rent they have paid over \$1,800.00 a month during the tenancy.

Filing Fee

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the tenants are successful in their application, I order the landlord to pay the \$100.00 filing fee the tenants paid to apply for dispute resolution.

Pursuant to section 72 of the Act, the tenants are authorized to make a one-time deduction of \$100.00 from a future rent payment in satisfaction of the above-noted award.

Conclusion

The tenants' application is granted.

The Two Month Notice is cancelled.

Rent in this tenancy is \$1,800.00 a month. The tenants are authorized to deduct from future rent payments any additional rent they have paid over \$1,800.00 a month.

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: November 30, 2022

Residential Tenancy Branch