



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KNOTTY PINE CABINS INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL FFT

Introduction

This hearing dealt with the tenant's application pursuant to section 67 of 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; and
- authorization to recover the filing fee for this application from the respondent, pursuant to section 72.

AD represented the landlord in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions.

Pursuant to Rule 6.11 of the RTB Rules of Procedure, the Residential Tenancy Branch's teleconference system automatically records audio for all dispute resolution hearings. In accordance with Rule 6.11, persons are still prohibited from recording dispute resolution hearings themselves; this includes any audio, photographic, video or digital recording. Both parties were also clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour. Both parties confirmed that they understood.

The landlord confirmed receipt of the tenant's application and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the landlord duly served with the tenant's application and evidence. The landlord did not submit any written evidence for this hearing.

As the tenant confirmed receipt of the 2 Month Notice dated June 27, 2022, I find that this document was duly served to the tenant in accordance with section 88 of the *Act*.

Issues(s) 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 recover the filing fee for this application from the landlord?

Background and Evidence

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 December 1, 2019. Monthly rent is currently set at \$950.00, payable on the first of the month. The landlord collected a security deposit amount of \$475.00, which is still held by the landlord.

The landlord issued the 2 Month Notice dated June 27, 2022, with an effective move-out date of August 31, 2022, for the following reason:

"The landlord that is a family corporation, and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit."

The landlord provided the following submissions for why they issued the 2 Month Notice. The landlord testified that they plan on moving into the rental unit as they recently had their stomach removed, and now find it difficult to climb stairs. The landlord testified that they did originally want to sell the rental unit, but was unable to as the tenant made it extremely difficult to do so. The landlord eventually gave up. The landlord confirmed that they own a second unit in the building.

The tenant is disputing the good faith of the landlord in issuing the 2 Month Notice. The tenant questions why her specific rental unit was chosen, especially considering the fact that the relationship between the parties was originally a positive one, but deteriorated after the landlord was unable to sell the rental unit. The tenant submitted in their evidentiary materials showing the conversation between the parties. On June 4, 2022, the landlord sent the tenant the following message: "Your lies cost me my sale. I'm going to open a lawsuits on Monday against you". The tenant received the 2 Month Notice a few weeks later on June 27, 2022 to vacate the rental unit on August 31, 2022.

Analysis

Subsection 49(4) of the *Act* sets out that a landlord that is a family corporation may end a tenancy in respect of a rental unit if a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit, which is the reason for why the landlord issued the 2 Month Notice. The tenant disputes this notice, citing that the landlord did not issue the Notice in good faith.

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 to occupy the suite, I find that the tenant has raised doubt as to the true intent of the landlord in issuing this notice.

I find that the evidence clearly shows that the relationship between the parties had significantly deteriorated after the landlord was unable to sell the rental unit. It is clear that the landlord was extremely upset with the tenant as they feel that the tenant's conduct and behaviour had cost them their sale. The landlord formally served the tenant with the 2 Month Notice a few weeks after informing the tenant that they were going to sue the tenant.

I find that the landlord has not met their burden of proof to show that they would be occupying this rental unit, and that is the only reason for ending this tenancy. I find that the testimony of both parties during the hearing raised questions about the landlord's good faith. Furthermore, I find that the landlord did not meet the burden of proof to support why this specific rental unit was chosen when they own two units in the same

building. Although the landlord referenced medical issues, the landlord did not provide any written evidence confirming the medical issue, and the specific needs associated with it. On a balance of probabilities and for the reasons outlined above, I find that the landlord has not met their onus to show that they truly plan on occupying the home, and that there is no ulterior motive for ending this tenancy.

I therefore allow the tenant's application to cancel the 2 Month Notice. The 2 Month Notice dated June 27, 2022 is hereby cancelled, and is of no force or effect. The tenancy will continue until ended in accordance with the *Act*.

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 June 27, 2022, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

I allow the tenant to implement a monetary award of \$100.00 for recovery of the filing fee, by reducing a future monthly rent payment by that amount. In the event that this is not a feasible way to implement this award, the tenant is provided with a Monetary Order in the amount of \$100.00, and the landlord(s) must be served with **this Order** as soon as possible. Should the landlord(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: December 09, 2022

Residential Tenancy Branch