



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

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.

The tenant attended the hearing with their advocate, SW, while the landlord was represented by their agents, SK, and LG. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

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 confirmed that they understood.

The landlord confirmed receipt of the tenant's application. In accordance with section 89 of the *Act*, I find that the landlord duly served with the tenant's application. As all parties confirmed receipt of each other's evidentiary materials, I find that these were duly served in accordance with section 88 of the *Act*.

The tenant confirmed receipt of the 2 Month Notice dated August 28, 2022, which was posted on the tenant's door. The tenant testified that they cannot recall the exact date that they received the 2 Month Notice. In accordance with sections 88 and 90 of the *Act*, I find the tenant deemed served with the 2 Month Notice on August 31, 2022, 3 days after posting.

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?

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 May 1, 2017. Monthly rent is currently set at \$945.00, payable on the first of the month. The landlord holds a security deposit of \$450.00 for this tenancy.

The landlord served the tenant with a 2 Month Notice dated August 28, 2022, with an effective move-out date of November 1, 2022, for the following reason:

- The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse, or child; or the parent or child of that individual's spouse).

LG testified in the hearing that they were the landlord's son, and that they planned on moving into the tenant's rental unit. LG testified that they had recently come into some hardships, and required a place to live. LG testified that the tenant's rental unit was the largest of all eight units in the building, and that there were no current vacancies in the building. LG testified that they were recently separated from their partner, and are currently living with their parents.

The tenant disputed the 2 Month Notice as they do not believe that the landlord had issued the Notice in good faith. The tenant noted that their rent was quite low, and no information was provided to the tenant about who was going to occupy the suite until this dispute was filed. The tenant testified that the unit was in need of repairs and attention, and had a leak, a mice infestation, and a slow draining bathtub.

The tenant also testified that there were issues between the tenant and landlord, as supported by the fact that all communication between the parties now takes place between the tenant's advocate or worker and landlord's agents. The tenant submitted a letter dated March 4, 2021 addressed to SK, the landlord's agent, about the tenant's interactions with SK's father, CG, the landlord for this tenancy. The letter referenced allegations about CG entering or attempting to enter the tenant's rental unit without

proper written notice or permission. The tenant noted how all interactions have been in accordance with this letter since that date.

The landlord's agents disputed the tenant's claims, and testified that five other tenants in the building were paying less than \$1,000.00 in monthly rent.

Analysis

Section 49 of the *Act* provides that upon receipt of a 2 Month Notice, the tenant may, within 15 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. The tenant was deemed served the 2 Month Notice on August 31, 2022, and filed their application on September 13, 2022. I find that the tenant filed their application for dispute resolution within the 15 days of service granted under section 49(8)(a) of the *Act*.

Subsection 49(3) of the *Act* sets out that a landlord may end a tenancy in respect of a rental unit where the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. In this case, the landlord's son, LG, testified that they intended to occupy the suite

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."

As the tenant had raised doubt as to the true intent of the landlord in issuing the 2 Month Notice, the burden shifts to the landlord to establish that they do not have any other purpose to ending this tenancy.

I find that the landlord has not met their burden of proof to show that LG would be occupying this rental unit, and that is the only reason for ending this tenancy. Despite the explanation provided about why LG would be moving into this specific rental unit, I find that the LG has failed to provide sufficient evidence to support that this was their only intention for ending this tenancy.

The tenant submitted a letter detailing the past history between the tenant and named landlord for this tenancy. The tenant submits that this tenancy is now managed by the landlord's agents due to the issues the tenant has had with CG in the past. The tenant also argued that the rental unit required repairs, and questioned why the landlord's son wanted to move into this building.

Although I find the tenant's testimony and evidence does raise some concerns about ulterior motive, the main reason for why I find the 2 Month Notice should be cancelled is the fact that other than the testimony provided in the hearing, the landlord has not provided specific details as to why they required this specific rental unit. Although LG referenced "hardship" and relationship issues, LG did not provide specific evidence about the events that have taken place that led to the issuance of the 2 Month Notice.

Although I recognize the desire of LG's desire to move out on their own, and have their own private space, I find the explanation provided by the LG lacked detail, and fails to address the questions raised in this dispute—primarily of why the landlord required this specific rental unit. I find that the landlord had sufficient time to submit further evidence, but failed to do so, including specific evidence to counter the tenant's concerns, such as specific information related to the size and monthly rent for each of the eight units in this building, and why the tenant's specific unit was chosen.

I find that the landlord has not met their burden of proof to show that that the only reason for ending this tenancy is for the landlord's son to occupy the rental unit. Accordingly, I allow the tenant's application to cancel the 2 Month Notice. The landlord's 2 Month Notice, dated August 28, 2022, is hereby cancelled and is of no force and effect. This tenancy continues until it is ended in accordance with the *Act*.

Conclusion

The tenant's application to cancel the landlord's 2 Month Notice is allowed. The landlord's 2 Month Notice, dated August 28, 2022, is cancelled and is of no force or effect. This tenancy is to continue until it is ended 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: February 01, 2023

Residential Tenancy Branch