



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a residential tenancy dispute. The tenant applied on October 12, 2022 for:

- an order to cancel a Two Month Notice for Landlord's Use, dated October 6, 2022; and
- recovery of the filing fee.

Those in attendance were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were 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.

Neither party raised an issue regarding service of the hearing materials.

Preliminary Matter

In addition to the October 6, 2022 Two Month Notice, the landlord served two other Two Month Notices on the tenant: one dated September 29, 2022, and the other dated October 12, 2022. During the hearing, the landlord withdrew the September 29 Notice and the October 6 Notice; these Notices are therefore without force or effect.

The decision will consider only the October 12, 2022 Two Month Notice, which I will refer to as simply "the Two Month Notice."

Issues to be Decided

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

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 tenant testified the tenancy began August 2011; the landlord agreed it began the summer of that year. The parties agreed on the following particulars of the tenancy: rent is \$954.10, due on the first of the month, and the tenant paid a security deposit of \$460.00, which the landlord still holds.

The parties agreed that the subject rental unit is the basement unit of the property, and that the landlord lives in the upper unit.

The landlord testified they served the Two Month Notice on the tenant by registered mail on October 14, 2022; the tenant testified they received it, but were not sure on what day.

The Two Month Notice is signed and dated by the landlord, gives the address of the rental unit, states the effective date of the Notice, states the grounds for the Notice, and is in the approved form. The Two Month Notice indicates the tenancy is ending because the landlord or the landlord's spouse will occupy the unit.

The landlord testified that lately they have been thinking of using the whole house, and that they want a simpler life, without dealing with renters. The landlord testified they don't want to share the property anymore, especially considering COVID.

The tenant suggested that the landlord is not acting in good faith, as the landlord's part of the property is shared with only one other person, and has two floors and four bedrooms. The tenant submitted that they think the landlord wants their unit so they can re-rent it for a higher rate.

The tenant submitted there were two incidences that made them question the landlord's motives.

One was last winter, when the heat failed. The tenant testified that the landlord did not provide a space heater, mentioned that the market rate for the unit is very high compared to what the tenant pays, and that the tenant therefore should be content and not complain.

The landlord testified that they did not recall a discussion about the rent at that time. The landlord testified they had also been without heat, and acted at once to resolve the issue, having professionals visit the property on at least five occasions. The tenant was notified that the landlord was consulting professionals. The landlord testified that with each visit, the professionals said that the issue was resolved, and the landlord thought that when the heat issue was fixed in their upper part of the property, they thought it was also fixed in the tenant's unit.

The tenant testified the other incident was that in September 2022 a new rent increase limit was announced for 2023, and the landlord served the tenants with their first eviction notice at the end of that month. The tenant submitted that the timing was suspect, suggesting the landlord wanted the tenant out by 2023, because even with the increase they would still not be paying very much rent.

The landlord testified they do not particularly care what the rent is, and that in the past when implementing an allowable increase and it has not come out to a round number, the landlord has suggested to the tenant that they pay a lower, "nice" number. The landlord gave the example of the current rent of \$954.10, stating that they had offered for the tenant to pay \$950.00 instead, but that the tenant declined.

The tenant testified that they insisted on paying the full rent of \$954.10 because that was the amount listed on the rent increase form from the landlord.

Analysis

Section 49 of the Act permits a landlord to end a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

[Policy Guideline 2A: Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member](#) provides that if a landlord has rented out a rental unit in their house under a tenancy agreement, the landlord can end the tenancy to reclaim the rental unit as part of their living accommodation. The Guideline provides the following example: If a landlord owns a house, lives on the upper floor and rents out the basement under a

tenancy agreement, the landlord can end the tenancy if the landlord plans to use the basement as part of their existing living accommodation.

The Guideline states that holding a space in vacant possession is inconsistent with the intent of section 49, and that the section does not allow a landlord to end a tenancy to occupy the rental unit and then leave it vacant and unused.

Based on the testimony of the parties, I find the landlord served the Two Month Notice on the tenant in accordance with section 88 of the Act, and that the tenant applied to dispute it within the deadline set out by section 49(8).

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

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.

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. And, as noted in Residential Tenancy Policy Guideline 2A, when the issue of a dishonest motive or purpose for ending the tenancy is raised by a tenant, the onus is on the landlord to establish they are acting in good faith.

Policy Guideline 2A explains that 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 purpose for ending the tenancy, and they are not trying to avoid obligations under the Act or the tenancy agreement.

The Two Month Notice indicates the tenancy is ending because the landlord or the landlord's spouse will occupy the unit.

However, the landlord testified that they have been "thinking" of using the whole house, and that they want a simpler life, without dealing with renters. The landlord testified they don't want to share the property anymore.

The landlord has presented no additional evidence to support their claim that they will occupy the unit, such as stating the purpose they will use the rental unit for, presenting witness testimony, or presenting documentary evidence.

Considering the preceding, it appears more likely than not that the landlords seek to end the tenancy in order to avoid their obligations under the Act, rather than because they intend in good faith to reclaim the rental unit as part of their living accommodation.

I find on a balance of probabilities that the landlord has failed to prove the reason for the Two Month Notice and that they are acting in good faith.

Therefore, I order the Two Month Notice for Landlord's Use is cancelled; the tenancy will continue until it is ended in accordance with the Act.

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

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

Conclusion

The tenant's application is granted.

The Two Month Notice for Landlord's Use is cancelled; the tenancy will 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: March 20, 2023

Residential Tenancy Branch