



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNL, OLC, FFT

Introduction

This hearing dealt with the tenant's application pursuant to 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;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, 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 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 was 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*.

As the tenant confirmed receipt of the 2 Month Notice dated November 18, 2022, which was posted on the tenant's door, I find that this document was duly served to the tenant in accordance with section 88 of the *Act*.

Preliminary Issue – 10 Day Notice to End Tenancy

The tenant submitted additional evidence related to a 10 Day Notice to End Tenancy which was not referenced in the original application. The tenant has not filed any amendments for this application to add any additional claims.

Rule 4.6 states the following:

As soon as possible, copies of the Amendment to an Application for Dispute Resolution and supporting evidence must be produced and served upon each respondent by the applicant in a manner required by the applicable Act and these Rules of Procedure.

The applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Amendment to an Application for Dispute Resolution and supporting evidence as required by the Act and these Rules of Procedure.

In any event, a copy of the amended application and supporting evidence must be received by the respondent(s) not less than 14 days before the hearing.

RTB Rules of Procedure 4.2 allows for amendments to be made in circumstances where the amendment can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made.

As no formal amendments have been filed by the tenant, and as these circumstances do not fall under RTB Rule 4.2, the hearing proceeded to deal with the original claims only.

Issues 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 an order requiring the landlord to comply with the Act, regulation or tenancy agreement?

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 fixed term tenancy began on September 2, 2019, with monthly rent set at \$1,600.00, payable on the first of the month. The landlord holds a security deposit of \$800.00 for this tenancy.

On November 18, 2022, the landlord served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use, with an effective move-out date of February 1, 2023, for the following reason:

- The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse.

The landlord testified that they require the home for themselves and their family due to the war in Ukraine. The landlord currently lives with their wife and mother-in-law at another property, but requires a larger place as they plan to move in with their extended family who had to flee Ukraine. The landlord testified that their current home cannot accommodate the ten parties, and as the land is leasehold property, the landlord is unable to build any additions.

The landlord submitted detailed evidence to show that they require the home for themselves and their family members from Ukraine. The landlord testified that they had attempted to accommodate the tenant by offering the tenant alternative accommodations, which the tenant refused.

The landlord is under the belief that the tenancy is a fixed term tenancy that reverted to a month-to-month agreement after September 1, 2021, as supported by the copy of the tenancy agreement possessed and submitted by the landlord.

The tenant is disputing the 2 Month Notice as they believe that both parties had agreed to amend the original two year agreement on July 14, 2020, changing the end date to September 1, 2029. The tenant submitted a copy of the amended agreement that is initialed by both parties, and dated July 14, 2020. The tenant testified that after showing some hesitancy about living "off the grid", the landlord offered the tenant a 2 year term, which the tenant had accepted with the understanding that they could try out the lifestyle and extend the term when they were ready. The tenant testified that in July 2020 they felt ready to extend the term, and when the landlord attended the property to clean the chimney, the tenant informed the landlord that they were no longer hesitant about living "off the grid", and could commit to a longer term. The tenant testified that the landlord had happily agreed to changing the date to September 1, 2029, changing the year, and initialing beside it. The tenant testified that they had urged the landlord to

make copies, but the landlord was in a hurry to leave for their flight that day. The tenant retained their own copy, which was submitted in evidence.

The landlord disputes the validity of the amendment, and argued that the tenancy is currently a month-to-month one. The landlord testified that they had consulted with their lawyer, who had advised against a ten year lease. The landlord testified that both parties had agreed to enter into a two year term, and the landlord was manipulated on July 14, 2020 into changing the lease agreement. The landlord does not dispute that the date was changed to September 1, 2029, and that they had initialed the agreement, but argued that the tenant had invited the landlord over for a swim, knowing that the landlord was “having personal problems” and had “consumed alcohol with the landlord” in order to manipulate and take advantage of the landlord. The landlord argued that they were in a state of distress, and inebriated, and therefore the change was not valid.

The tenant disputes manipulating the landlord, and that either the landlord or themselves were drinking or drunk that day. The tenant testified that not only did the landlord drive to and from the residence, the landlord had climbed onto the roof to clean the chimney, which was not possible or appropriate if the landlord was intoxicated.

Analysis

Section 49(2) of the Act states *“a landlord may end a tenancy for a purpose referred to in subsection (3), (4), (5) or (6) by giving notice to end the tenancy effective on a date that must be*

(a) not earlier than 2 months after the date the tenant receives the notice,

(b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and

(c) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

In review of the evidence and testimony provided for this hearing, I find that the landlord acknowledged that they had initiated the change on the tenancy agreement on July 14, 2020. Although the landlord argued that they were manipulated by the tenant into doing

so, and that they were inebriated, I do not find this testimony to be supported in evidence. The evidence clearly shows that the landlord had agreed to extend the fixed term to September 1, 2029. I find that the landlord has not provided any evidence to support that this change was made under duress or coercion. I note that section 13(3) of the *Act* states that “Within 21 days after a landlord and tenant enter into a tenancy agreement, the landlord must give the tenant a copy of the agreement.”. There is no obligation on part of either party to make copies of any future amendments for the changes to take effect. I find the copy submitted by the tenant to be valid, and sufficient evidence to support the mutual agreement to change the fixed term, extending the fixed term to September 1, 2029. Although I am sympathetic towards the fact that the landlord and their family has been faced with unforeseeable circumstances that has changed the needs of the landlord since 2019, this does not change the fact that the 2 Month Notice must comply with section 49(2)(c) of the *Act*.

Accordingly, I allow the tenant’s application to cancel the 2 Month Notice. The landlord’s 2 Month Notice, dated November 18, 2022, is hereby cancelled and is of no force and effect. This tenancy is to continue until it is ended in accordance with the *Act*.

The tenant also applied for an order for the landlord to comply with the *Act*, specifically to allow the tenancy to continue until ended in accordance with the *Act*. As this issue was addressed above, no further orders will be made, and this portion of the tenant’s application is dismissed with leave to reapply.

I find that the tenant is entitled to recovery of the filing fee.

Conclusion

The tenant’s application to cancel the landlord’s 2 Month Notice is allowed. The landlord’s 2 Month Notice, dated November 18, 2022, is cancelled and is of no force or effect. This tenancy is to continue 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.

The remainder of the tenant's application is 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*.

Dated: March 20, 2023

Residential Tenancy Branch