



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNL, LRE, LAT, OLC, FF

Introduction

This hearing convened to deal with the tenant's application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The tenant applied for the following:

- an order cancelling the Two Month Notice to End Tenancy for Landlord's Use of Property (Notice/2 Month Notice) issued by the landlord,
- an order suspending or setting conditions on the landlord's right to enter the rental unit,
- authorization to change the locks to the rental unit,
- an order requiring the landlord to comply with the Act, regulations, or tenancy agreement, and
- recovery of the cost of the filing fee.

The tenant, the landlords, and the landlord's agent (agent) attended, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. All parties were affirmed.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me. The landlord confirmed receipt of the tenant's application, which contained the tenant's evidence. The landlord did not file evidence.

I have reviewed all oral, written, and other evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced in this Decision. Further, only the evidence specifically referenced by the

parties and relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters-

Rule 2.3 states claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

In this circumstance the tenant indicated several matters of dispute on the application, the most urgent of which is the application to cancel the 2 Month Notice. I find that not all the claims on the application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenant's request to cancel the 2 Month Notice. The balance of the tenant's application is dismissed, with leave to re-apply.

Leave to reapply is not an extension of any applicable time limit.

Issue(s) to be Decided

Should the 2 Month Notice be cancelled or upheld?

Background and Evidence

The testimony from the hearing showed a tenancy start date of July 1, 2018 for a monthly rent of \$1,200.

The evidence shows that the landlord issued the tenant the Notice on December 31, 2022, and the tenant confirmed receiving the Notice on December 31, 2022, in person. The Notice listed an effective move-out date of February 28, 2022. Filed in evidence was a copy of the Notice.

The Notice listed as reason for ending the tenancy is that the rental unit will be occupied by the child of the landlord or landlord's spouse.

Pursuant to section 7.18 of the Rules, the landlord proceeded first in the hearing to give evidence to support the Notice.

The landlord testified to the following: That their son is graduating from university sometime this year, wants to move out of their home, and into the rental unit. The rental unit is in 4-plex property and the tenant occupies one of the 2-bedroom units on the second floor. The rental unit was the one their son liked over the other 3 units. The other upper unit is rented for a higher monthly rent, but they were not certain what that rent was. They were not sure when their son was graduating, and that it could be in 6 months or at the end of the year. Their son wants to move out and live on his own.

Tenant's response

In his application, the tenant wrote the following:

1) The Landlord is very unhappy because I argued with him about rent increase in 2021 2) The Landlord is very unhappy because he had to pay to clean heating ducts and fix furnace system. Dirty heating ducts made me very sick (allergy) with blood coming out from my nostrils 3) The Landlord forced me to continue paying for gardening services but I do not want to 4) The Landlord increase rent more than 1.5% again in October 2022 without giving 3-month notice. I argue with landlord about this.

[Reproduced as written]

The tenant testified to the following: That the landlord tried to charge the tenants in the rental units for gardening and after that, the landlord increased the monthly rent by \$50. The landlord told the tenants that if they did not pay for the gardening, they should move out.

During the hearing, the tenant submitted that his monthly rent is now \$1,250, as the landlord forced them to pay for gardening.

The landlord denied they forced the tenants to pay for gardening.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Section 49 (3) of the Act states that a landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

When a tenant disputes a Two Month Notice to end tenancy, the landlord has the burden to prove that not only do they intend to use the rental unit for the stated purpose, but also that the Notice was given in good faith.

Rule 6.6 provides that the *“standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed”*.

Residential Tenancy Policy Guideline 2 provides 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 motive for ending the tenancy, and they are not trying to avoid their obligations under the Act.

Upon review of the Two Month Notice to End Tenancy dated December 31, 2022, I find that Notice to be completed in accordance with the requirements of section 52 of the Act and I find that it was served upon the tenant in a manner that complies with section 88 of the Act.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

The landlord provided no documentary evidence to support their 2 Month Notice. Apart from that, the other evidence I find consisted of equally credible testimony from the parties with different versions of events. In that case, the party having the burden of proof must supply further evidence.

I find the landlord submitted insufficient evidence to show that their son truly intended to move into the rental unit as a living accommodation for at least 6 months after the effective date of the Notice. The landlord's son was not present at the hearing to provide direct testimony, nor were there supporting documents, such as records, an affidavit or statutory declaration. No evidence was submitted that the landlord's son attended university or if so, the date of graduation.

While the tenant raised the good faith intent as he submitted the 2 Month Notice was in response to the tenant's refusal or reluctance to pay for gardening, I find it is not necessary to consider the good faith of the landlord as there was insufficient evidence that the landlord's son truly intended to move into the rental unit as a living accommodation for at least 6 months.

As I have found that the landlord submitted insufficient evidence that their son intended to occupy the rental unit as a living accommodation, and therefore not met their burden of proof, I **ORDER** that the 2 Month Notice dated December 31, 2022, for an effective move-out date of February 28, 2023, is **cancelled, and it is of no force or effect**. The tenancy will continue until it is ended in accordance with the Act.

As I have granted the tenant's application, I allow the tenant recovery of their filing fee of \$100. I grant them a one-time rent reduction of \$100 from a future rent payment in satisfaction of their monetary award, notifying the landlord of when this deduction is being made. The landlord may not serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities when the tenant makes this deduction of \$100.

Information for the parties

During the hearing, testimony and evidence was given that the tenant has been paying rent over the amount of their obligation under the tenancy agreement. The tenant submitted that he was forced to pay an extra \$50.

I inform the parties that the monthly rent under the written tenancy agreement is \$1,200, and unless the landlord has given the tenant a notice of rent increase under the Act, that amount remains the tenant's monthly rent. The rent may not be increased unless the landlord complies with sections 41-43 of the Act. The tenant must be given a written notice of a rent increase that is on the proper form and it may only be in the allowed amount, among other things. I have not given findings or orders in relation to whether the tenant has been overpaying in the monthly rent, as the issue for this application dealt only with the tenant's request to cancel the Notice. If the tenant has been overcharged for rent, the tenant may make an application for dispute resolution for a monetary claim and/or authority to withhold an overpayment from their upcoming monthly rent.

Additionally, the landlord said that the tenant has not paid monthly rent for January, February, or March. The tenant said he called the RTB and was told he did not have to pay rent until the hearing.

Despite what the tenant may or may not have been told by staff at the RTB, a tenant must pay the monthly rent due under the written tenancy agreement whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent. What this means, as the tenancy has not ended, the tenant **now** owes the monthly rent due under the tenancy agreement for January, February and March 2023.

Conclusion

The tenant's application has been granted as I have ordered the 2 Month Notice cancelled and is of no force or effect.

The balance of the tenant's application not dealing with his request for cancellation of the 2 Month Notice 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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: March 24, 2023

Residential Tenancy Branch