



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

A matter regarding KAUAIAN LIFE HOLDINGS LTD. and
[tenant name suppressed to protect privacy]

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. On December 21, 2022 the tenant applied for:

- an order to cancel a Two Month Notice for Landlord's Use, dated December 15, 2022 (the Two Month Notice); and
- recovery of the filing fee.

Those present 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.

Neither party raised an issue during the hearing regarding service of the Notice of Dispute Resolution Proceeding or evidence.

Issues to be Decided

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

Background and Evidence

While I have considered the presented documentary evidence and 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 parties agreed on the following particulars of the tenancy. It began February 15, 2022; rent is \$2,000.00, due on the 15th of the month; and the tenant paid a security deposit of \$1,000.00 and a pet damage deposit of \$1,000.00, which the landlord holds in trust.

The landlord testified they served the Two Month Notice on the tenant by email on December 15 and 20, 2022. The tenant testified the landlord's December 15 email did not have a Two Month Notice attached, but the December 20 email did. The landlord claimed they did attach the Two Month Notice to the December 15, 2022 email. An email string was submitted as evidence by the tenant, who submitted that the "email is a forgery; it was forwarded from a different email address than the original (presumably how the notice was added), & the time is missing "PM." Also her evidence is not a sent email."

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

The landlord testified that her husband had a stroke November 28, 2022 and was taken to a rehabilitation center after treatment in hospital. The landlord testified that the rehab centre only keeps patients for two months, then discharges them. The landlord testified that her husband, now living in their home, is not able to bathe at home or sleep in their bedroom, as the rooms are on an upper floor and he is not able to climb stairs. The landlord testified her husband must go to their son's to take a shower and must sleep on a mattress on the floor of the living room.

The landlord testified that her husband must go to the rehab centre every day and that she and her husband wish to occupy the rental unit as it is a convenient seven-minute drive from the rehab centre. The landlord submitted that currently her husband must get up at six in the morning to get to rehab. The landlord did not state how long the drive from home takes, but submitted as evidence a Google Map, labelled as the distance and drive time from the landlords' home to the rehab centre, showing a travel time of at least 52 minutes.

The tenant submitted that the landlord's evidence is deceptive as it shows not a driving route, but the route a bus takes. This is supported by the document, which shows that the time via public transit is at least 52 minutes, while the drive time in a vehicle is at least 21 minutes.

The tenant submitted that the Two Month Notice was served based on medical records dated December 2, 2023, four days after the landlord's husband's stroke, and that the December 2 documentation is the only medical record submitted by the landlord as evidence. The tenant testified that the landlord emailed her on January 18, 2023, stating that her husband was already out of the wheelchair and using a walker. The tenant submitted that the landlord has provided no evidence showing her husband's progress over the last six months of rehab, and that the landlord failed to submit as evidence a recent letter from the rehab centre, stating that the landlord's husband is still not able to climb stairs.

The tenant testified that the landlord has a history of trying to evict her, and that this is the second notice to end tenancy served on the tenant in the last two years. The tenant testified that with the first notice, the landlord said her son would be moving into the rental unit. The tenant testified that she offered to pay more rent, the landlord countered with an even higher number, which the tenant accepted, and the tenancy continued. The tenant submitted that if the landlords' son had truly needed the unit, the more money would not have made a difference. The tenant testified that before the landlord gave her notice for the landlords' son to move in, the landlord had attempted to raise the rent more than the legal limit and without providing proper notice.

The landlord testified that when her son had to find a new place, the landlord offered for him to move into the rental unit, but when the landlord told her son she was being bullied by the tenants, her son said to "let them be" and found another place. The landlord testified that when the tenant offered to pay a higher rent amount, the landlord accepted without countering.

The tenant testified she did not bully the landlord, and referred to an email submitted as evidence. In the email string, which begins January 22, 2022, the tenant offered to pay the landlord \$1,950.00, the landlord countered with \$2,000.00, stating that if the tenant accepts, the landlord will find another place for her son to live.

Analysis

Based on the testimony of the parties, I find the Two Month Notice was served on the tenant in accordance with section 88 of the Act.

As the Two Month Notice is signed and dated by the landlord, gives the address of the rental unit, states an effective date, states the reason for ending the tenancy, and is in the approved form, I find it meets the form and content requirements of section 52.

The standard of proof in a dispute resolution is on a balance of probabilities, which means it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

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: *Ending a Tenancy for Occupancy by Landlord, Purchaser, or Close Family Member*, 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, dated December 15, 2022, indicates the landlord or their spouse intends to occupy the rental unit. The landlord testified that she and her husband intend to occupy the unit as, unlike their home, it has bathing facilities and a bedroom that her husband can access, and is close to the rehab facility.

The tenant submitted that the landlord is not acting in good faith, as the landlord has provided deceptive evidence regarding the drive time from the landlords' home to the rehab facility. The Google Map submitted by the landlord is labelled as the distance and drive time from the landlords' home to the rehab centre, showing a travel time of around 52 minutes, however, the map is not a driving route for a personal vehicle, but is a public transit route. The same document notes that the drive time in a vehicle is around 21 minutes.

The landlord did not offer an explanation for this discrepancy.

The tenant submitted that the only medical documentation submitted by the landlord in support of her claim is dated December 2, 2023, four days after the landlord's husband's stroke. The tenant testified that the landlord stated on January 18, 2023 that her husband was already out of a wheelchair and was using a walker. The tenant submitted that the landlord could have provided strong evidence in support of her claim that her husband still cannot climb stairs, such as a dated letter from the rehab, but did not.

The landlord did not explain why she did not submit recent medical documentation in support of her claim.

The tenant testified that the landlord has a history of trying to evict her, and that the landlord previously gave the tenant notice that the landlord's son would be moving in. The tenant stated that when she offered to pay more rent, the landlord countered with an even higher number, which the tenant accepted.

The landlord testified that when she told her son that the tenants were bullying her about the previous notice to end of tenancy, her son said to "let them be." While that is possible, I find it highly improbable. The landlord testified that when the tenant offered to pay a higher rent amount, the landlord accepted without countering. However, the tenant submitted documentary evidence demonstrating that is not true, and that the tenant accepted the landlord's higher counteroffer.

I find that whether purposefully or not, the landlord has repeatedly provided unreliable information during this proceeding, which causes me to question the landlord's credibility.

Based on the preceding, I find on a balance of probabilities that the landlord has failed to prove the reason for the Two Month Notice, and to prove that the Two Month Notice was served in good faith.

Therefore, the Two Month Notice is cancelled, and this 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 her 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 to dispute the Two Month Notice is granted.

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: May 08, 2023

Residential Tenancy Branch