



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNL, OLC

Introduction

On January 31, 2023, the tenant applied to dispute a 2 Month Notice to End Tenancy For Landlord's Use of Property (the 2 Month Notice) issued on January 28, 2023.

The landlord confirmed they received the tenant's application and evidence submissions. The landlord admitted they had not served their evidence to the tenant as required by the Rules of Procedure. I am omitting the landlord's evidence.

Preliminary Matters

The tenancy agreement names Landlord CL who is not named as a respondent and did not attend the hearing. The landlord's wife XG and the landlord's agent JL attended the hearing for the landlord. The landlord's agent JL agreed that she is appropriately named as respondent in this matter.

Issue(s) to be Decided

1. Does the 2 Month Notice end the tenancy?
2. Is the landlord complying with rent increase rules?

Facts and Analysis

The tenancy began on February 15, 2022 for a fixed term ending February 28, 2023, then automatically continued on a month-to-month basis. Monthly rent of \$2,000.00 is due on the first of each month. The tenant paid a security deposit of \$1,000.00.

Sometime around December 2022 the parties began to negotiate the renewal of the tenancy. The tenant submitted a copy of their outgoing email to Landlord JL, dated December 28, 2022, indicating that the tenant would not accept a rent increase of \$600.00, but could consider an increase of \$100.00 per month. The tenant says they would like to stay living in the rental unit, but in case the landlord decides to move into the unit as mentioned, the tenant would request an additional month's notice.

The tenant submitted audio recordings of three phone calls from January 26, 2023 and one phone call from January 28, 2023. On January 26, 2023, the tenant agreed to accept a rent increase of \$200.00 per month provided that the landlord gave three months notice before implementing that increase. JL indicated that the landlord would prefer to sign a new tenancy agreement beginning March 1, 2023 at the increased rent amount. In the next call that day, JL informed the tenant that the landlord would move into the rental property because the tenant would not agree to their terms regarding the rent increase, and the landlord "cannot keep losing money."

In the phone call on January 28, 2023, JL said the tenant's choice was an "either/or" situation. Either the tenant agreed to the rent increase, or the landlord would serve a 2 Month Notice. JL then emailed the 2 Month Notice to the tenant on January 28, 2023, with an effective date of March 31, 2023.

In these circumstances, the landlord must prove they served the 2 Month Notice with the honest and good faith intention to occupy the rental unit. According to Residential Tenancy Policy Guideline #2a, this means the landlord does not have an ulterior purpose for ending the tenancy, and they are not trying to avoid obligations under the RTA or the tenancy agreement.

The landlord says the reason they want to move into the rental unit is because they currently live in a 3 bedroom home with XG's parents and brother. The landlords CL and XG have a 17 month old child, and they currently share their bedroom with their child. XG's parents were able to help out with their baby, and now that the child is older everyone is ready for XG and CL to move out. XG's parents did not attend the hearing or provide any supporting testimony.

The landlord owns another rental unit with CL's parents, but it is an older building and a fixed term tenancy ending October 2023. So they would not consider living in it. The landlord says they could either move into the rental unit or rent a similar unit in a similar area.

When asked to explain why they requested a rent increase if they intended to move into the rental property, the landlord said if they did not move into the rental property, increased rent from the tenant would allow them to afford “market rent” in their desired neighborhood. JL mentioned that “market rent” for the area was around \$2,700.00, much higher than what the tenant pays, and that does not seem fair to the landlord. The landlord “wanted to balance their balance sheet” and if they could not work it out with their tenant, they would just move into the rental unit.

The tenant says they were told the reason for the 2 Month Notice was that the landlord was losing money. The landlord’s agent, JL admits that they did not explain any reasons of “family life” to the tenant.

While their growing family is a convincing reason for the landlord to move out of XG’s parent’s home, it does not necessarily indicate that the landlord served the 2 Month Notice in good faith without an ulterior motive.

Based on the tenant’s December 28, 2022 email, I find the tenant’s option from the outset of negotiations was to either agree to a rent increase or be served with a 2 Month Notice. From the January 28, 2023 phone call, it is clear that the landlord served the 2 Month Notice because the tenant did not agree to the proposed rent increase.

Given that the landlord presented the 2 Month Notice as an “either/or” situation during rent increase negotiations, I find that the 2 Month Notice was used as leverage rather than being served in good faith.

Therefore, I cancel the 2 Month Notice. This tenancy will continue until it is ended in accordance with the Act.

The tenant requests an order that the landlord comply with the rent increase rules.

- Section 41 and 42 set out the rent increase rules, including that the landlord “must give a tenant notice of a rent increase at least 3 months before the effective date of the increase”, and that “A notice of a rent increase must be in the approved form.”
- Policy Guideline #30 says Rent can only be increased between fixed-term tenancy agreements with the same tenant if the notice and timing requirements for rent Increases are met.

- Policy Guideline #37b explains how a landlord and tenant can mutually agree to increase rent.

If the parties decide to enter into a new fixed term tenancy, the landlord must still comply with the notice and timing requirements under the Act. If the tenant agrees to a higher than allowable rent increase, their agreement must be in writing, signed and dated, and clearly set out the amount and any conditions of the agreement, and the landlord must still comply with the notice and timing requirements under the Act.

Conclusion

The 2 Month Notice is cancelled. This tenancy continues 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: May 26, 2023

Residential Tenancy Branch