



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNL, 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; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

Preliminary Issue: Do I Have Jurisdiction To Hear This Matter?

I informed both parties in the hearing that I can only hear a dispute between two parties where there is a tenant and landlord relationship. Although both parties confirmed at the beginning of the hearing that I do have jurisdiction to hear this matter, the respondent stated multiple times that this was not a tenancy, but an offer by the respondent to assist the applicant and their child, and that no rent payments were requested by the respondent in exchange for this occupancy. The respondent testified that the applicant had deposited funds into their bank account, which were automatically deposited because of the respondent's auto deposit settings.

The applicant argued that this was a tenancy, with a verbal agreement that rent was set at \$800.00 per month. The applicant testified that they had electronically transferred to the respondent payments of \$425.00 on December 4, 2022, \$425.00 on January 12, 2023, and \$400.00 on February 1, 2023. The applicant argued that the two parties had entered into a two year fixed-term agreement that was originally to begin in December 2022. The applicant submitted copies of text message communication between the parties.

Both parties confirmed that the applicant moved in on February 1, 2023, and is still residing in the suite.

Analysis

The definitions of a “tenancy” and a “tenancy agreement” are outlined in the following terms in section 1 of the *Act*:

“tenancy” means a tenant’s right to possession of a rental unit under a tenancy agreement;

“tenancy agreement” means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a license to occupy a rental unit.

Despite the disputed facts before me, I find that the evidence supports that a tenancy exists between the parties. Although the respondent denies requesting or accepting rent payments from the applicant, the applicant submitted a copy of text message communication between the parties where the respondent informed the applicant: “Per my previous text we will reevaluate the situation. It seems it’s not what either of us anticipated.”. The applicant responded “You are jeopardizing my custody with my child. I gave up my suite on the go ahead you gave me. What did you anticipate?”. The respondent replied “Well I wasn’t anticipating your immediate expectations and your denial to pay a rent to help offset costs. I will not subsidize things over the next month. It seems I have to find 1700 I don’t have to pay for repairs that I thought we had discussed would come frl. January rent. Though you’ve now told me that you have had financial changes which seems to be not great news. Several things you’ve mentioned recently are concerning...your health, your expectations of renting (notwithstanding the lack of the stove at this time which I now can not afford) and now your change in..”

I find that the respondent clearly referenced rent payments in the text message they sent to the applicant. Although a written tenancy agreement does not exist between the

parties, I find that the respondent had expected the applicant to provide compensation in exchange for their occupancy during their stay. Accordingly, I find that a tenancy does exist between the two parties, and I have jurisdiction to hear this matter.

I note that although the tenant had referenced a fixed-term tenancy of two years, I do not find that the tenant had provided sufficient evidence to support that the two parties had entered into a fixed-term tenancy. As such, I will consider this tenancy to be a month-to-month tenancy that began on February 1, 2023.

Preliminary Issue – Service of Tenant’s Dispute Resolution Package and Evidence

The tenant had attempted to serve the landlord with their dispute resolution documents by registered mail on March 10, 2023, but the package was returned to the sender as there was a typographical error with the landlord’s address. A new package was sent to the landlord by way of registered mail on April 6, 2023, with the landlord confirmed they had received and reviewed. The landlord responded with their own evidence package on April 25, 2023, which the tenant confirmed that they had received.

The landlord expressed concern that the tenant did not serve the landlord in a timely manner.

Rule 3.14 of the RTB’s Rules of Procedure establishes that a respondent must receive evidence from the applicant not less than 14 days before the hearing. The definition section of the Rules contains the following definition:

In the calculation of time expressed as clear days, weeks, months or years, or as “at least” or “not less than” a number of days weeks, months or years, the first and last days must be excluded.

In accordance with rule 3.14 and the definition of days, the last day for the tenant to file and serve evidence as part of their application was April 24, 2023.

Where late evidence is submitted, I must apply rule 3.17 of the Rules. Rule 3.17 sets out that I may admit late evidence where it does not unreasonably prejudice one party. A party to a dispute resolution hearing is entitled to know the case against him/her and must have a proper opportunity to respond to that case.

In this case, I find that the tenant did attempt to serve the landlord with their dispute resolution package in accordance with section 89 of the Act on April 6, 2023,

immediately after receiving the Notice of Hearing from the RTB. I am satisfied that the tenant did not intentionally delay the service of their application and evidence, and upon realizing their mistake, they attempted to serve the landlord as soon as possible. I am satisfied that the landlord did receive the tenant's application and evidentiary materials, and had sufficient time to review the materials, and properly respond. I do not find that there is unreasonable prejudice to either party by allowing the hearing to proceed, and by admitting the tenant's late evidence. Accordingly, the hearing proceeded to hear this application.

As the tenant confirmed receipt of the 2 Month Notice dated February 24, 2023, I am satisfied that the tenant was duly served with this 2 Month Notice.

Issues(s) 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 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.

As noted above, the tenant has been residing in the basement suite since February 1, 2023, and I find that a tenancy exists between the parties.

On February 24, 2023, the landlord served the tenant with a 2 Month Notice to End Tenancy for an effective date of April 30, 2023. The landlord informed the tenant that their son was moving in.

The tenant disputed the 2 Month Notice on March 9, 2023 as they do not believe that the landlord had issued the 2 Month Notice in good faith. The tenant argued that they were served with the 2 Month Notice after the landlord refused to acknowledge that there was a tenancy between the two parties. The tenant notes that the landlord then proposed that the parties enter into a fixed-term tenancy agreement ending on April 30, 2023, with monthly rent set at \$1,800.00 month.

The landlord testified that they require the suite as their son was graduating and needed their own space. The landlord submitted a written statement from their son stating that they are currently 17 years old, and will be 18 in August 2023. The landlord's son stated

that they would like to move into the basement suite for their own privacy, and for more space. The landlord submits that they had offered the accommodation as a temporary arrangement to assist the tenant and their daughter.

In the landlord's statement, the landlord expressed concern for their safety as they believe that the tenant has posed a significant hazard with their belongings, and notes that the home is a single family home with no dedicated suite.

Analysis

Subsection 49(3) of the *Act* sets out that a landlord may end a tenancy in respect of a rental unit where the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. The landlord testified that they require the suite for their son to move into. The tenant disputed the 2 Month Notice as they do not believe that the 2 Month Notice was issued in good faith, noting that the landlord did not want to acknowledge that there was a tenancy.

Residential Tenancy Policy Guideline 2: Good Faith Requirement When Ending a Tenancy states:

"If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy."

If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate that they do not have an ulterior motive for ending the tenancy."

As the tenant had raised doubt as to the true intent of the landlord in issuing the 2 Month Notice, the burden shifts to the landlord to establish that they do not have any other purpose to ending this tenancy.

I find that the landlord has not met their burden of proof to show that they require the basement suite for their son, and that is the only reason for ending this tenancy. Despite the explanation provided about why they require the basement suite, and the son's

written statement that they plan on occupying the basement suite, the burden is on the landlord to support that there is no ulterior motive for ending this tenancy.

I find the evidence and testimony presented raised considerable doubt as to the landlord's true motives for ending this tenancy. As noted in the landlord's own testimony and evidence, the landlord did not want to acknowledge that there was a tenancy between the two parties. Although I accept the fact that this tenancy had begun with good intentions of helping the tenant out, I find that the relationship between the parties deteriorated as time passed, and the landlord no longer wanted the tenant to occupy the basement suite of the home.

I am not satisfied that the landlord had provided sufficient evidence to support that the true reason for ending this tenancy is for the landlord's son to occupy the suite. I find that the relationship had deteriorated between the two parties, and the landlord had changed their mind about allowing the tenant to reside in the home.

The landlord also raised concerns about the tenant's behavior, which brings into the question the landlord's true intentions to end this tenancy. I find that the landlord has not met their onus of proof to show that the landlord, in good faith, requires the tenant to permanently vacate the rental unit in order for the landlord's son to move into the suite.

Accordingly, I allow the tenant's application to cancel the 2 Month Notice. The landlord's 2 Month Notice, dated February 24, 2023 is hereby cancelled and is of no force and effect. This tenancy continues until it is ended in accordance with the *Act*.

As the tenant's application has merit, I allow the tenant to recover the \$100.00 filing fee.

Conclusion

The tenant's application to cancel the landlord's 2 Month Notice is allowed. The landlord's 2 Month Notice, dated February 24, 2023, is cancelled and is of no continuing 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.

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 25, 2023