



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 February 6, 2023 application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- Cancellation of a 2 Month Notice for Landlord's Use of Property pursuant to section 49 (the Notice)
- An authorization to recover the filing fee for this application, under section 72

Preliminary Issue

- Remove Tenant

A notary business, used by the Tenant to swear a document, was listed as a tenant on this dispute. NM, on behalf of the notary business, confirmed they were not a tenant. As such, I have removed that notary business as a tenant from this dispute.

- Correct Rental Address

I have added basement to the rental address to differentiate the rental unit from the unit upstairs with the same address.

- Notice Requirements in s. 52 of the *Act*

The Notice served by the Landlord on the Tenant, on January 22, 2023, did not list the grounds for ending the tenancy. For a notice to end tenancy to be effective it must be in writing and must meet the requirements listed in s. 52 of the *Act*, including stating the grounds for ending the tenancy.

The Tenant argued that the Notice was incomplete because it did not state why it was being given. The Landlord's agent and wife KS (the Landlord's Wife) testified that they

made a mistake when filling out the Notice and forgot to check off the reason the tenancy was ending.

The Landlord's Wife further testified, once they became aware of the mistake, in or around February or March 2023, they called the Tenant and told them the reason. The reason the Notice was given was because the Landlord's mother and mother-in-law would be moving into the rental unit. The Tenant confirms a call did not occur where the Landlord's Wife informed him of the reason the Notice was given. The Landlord also submitted into evidence the corrected page of the Notice with the grounds checked off; however, that corrected page was never provided to the Tenant.

Pursuant to s. 68 of the *Act*, I find it reasonable to amend the Notice because the Tenant was advised of the information that was omitted.

Issue(s) to be Decided

- Is the Tenant entitled to an order cancelling the Notice?
- Is the Tenant entitled to recover the filing fee?

Facts and Analysis

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to relevant facts and information in this decision.

The parties confirmed the following details with respect to the tenancy:

- The Landlord took over the tenancy from the previous owner of the property but neither party is aware of the date
- Rent is \$625 per month and is due on the 1st of the month
- A security deposit of \$700 was paid and is still retained by the Landlord

Is the Tenant entitled to an order cancelling the Notice?

The parties agreed the Landlord served the Notice in person, on January 22, 2023. I have been provided with a copy of the Notice and as discussed above it was issued on the basis that the Landlord's mother and mother-in-law would be occupying the rental unit.

The Landlord's Wife testified that the Landlord's mother currently lives upstairs with them, but due to her age it is difficult for her to get around and handle the stairs, which

results in her being stuck inside all day. Having her occupy the rental unit would make it easier for her to walk around outside and stay active, as the rental unit has direct access outside. The Landlord's Wife further testified that their mother would also be moving into the rental unit. The Landlord's Wife stated having them in the rental unit would make it easier to care for them and they could keep each other company.

The Tenant testified that they believe the reason the Notice was given was because the Tenant would not agree to pay increased rent. The Tenant further testified that for a several months before the Notice was served, the Landlord and Landlord's wife had conversations with them about paying more rent. The Landlord never asked for a specific amount but stated they could be renting the place for \$1,500.00 - \$2,000.00 and that they would be happy taking whatever amount the Tenant could pay. The Tenant testified that when the Landlord gave the Notice to them, they said "We have given you many chances to give us more money for rent and you had not done so Rod. So now you have until the end of March to move out. I'm sorry Rod". The Landlord's Wife disputes that the Landlord ever said this.

When I asked if there had been any conversations around increasing rent prior to the Notice being given, the Landlord's Wife responded with "does the Tenant have any evidence about a rent increase". I reiterated that I was simply asking if these conversations took place and the Landlord's Wife said no.

Section 49 of the *Act* allows the Landlord to end the tenancy if a close family member intends, in good faith, to occupy the unit. Good faith means a landlord is acting honestly and intends to do what they say they are going to do (Policy Guideline 2A). It means there is no ulterior purpose for ending the tenancy. Typically, the courts have found that good faith requires honest intentions and no dishonest motive behind the notice to end tenancy.

Since the Tenant has raised an issue of dishonest motive or purpose for ending the tenancy, the onus is on the Landlord to establish good faith.

The parties have presented conflicting testimony around whether any rent increase conversations took place. When I asked the Landlord's Wife if they had discussed rent increases with the Tenant, their reaction was to not answer and instead ask if the Tenant had any evidence of the conversations. I interpret this as trying to avoid the question which causes me to question the Landlord Wife's credibility. In comparison, the Tenant was able to provide detailed information of what was said by the Landlord. Specially, the Tenant remembered information that was said during the conversation

when the Notice was given and previous conversations around rent. Given that the Tenant was able to provide a detailed description of what occurred, I find that these conversations likely took place. The conversation that occurred when the Notice was given to the Tenant calls into question the motive of the Notice.

Both parties have presented equally probable scenarios of why the Notice was given; however, the onus falls on the Landlord to shift the balance in their favour. The Landlord did not have their mother or their mother-in-law as a witness to testify that they were moving in. Furthermore, the Landlord did not provide any other evidence to support why they have issued the Notice, other than the testimony of the Landlord's Wife.

The Landlord has not provided compelling evidence to show that their mother and mother-in-law intend to move into the rental unit in good faith. Accordingly, the Tenant's application to cancel the Landlord's Notice is granted. The tenancy continues until it is ended in accordance with the *Act*.

Is the Tenant entitled to recover the filing fee?

Because the Tenant was successful, I award \$100.00 as reimbursement for the filing fee, pursuant to section 72(1) of the *Act*.

Conclusion

The Tenant's application to cancel the Landlord's Notice is granted and the Notice is of no force or effect. Pursuant to section 72(2) of the *Act*, the Tenant can deduct \$100.00 from their next rent payment.

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: June 01, 2023

Residential Tenancy Branch