



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of a Two Month Notice to End Tenancy For Landlord's Use of Rental Property (the "Two Month Notice"), pursuant to section 49;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing. No issues were raised with respect to the service of the application and evidence submissions on file.

Preliminary Issue – Scope of Application

Residential Tenancy Branch Rules of Procedure, Rule 2.3 states that, if, in the course of the dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

Aside from the tenant's application to dispute the Notice to End Tenancy, I am exercising my discretion to dismiss the remainder of the issues identified in the tenant's application with leave to reapply as these matters are not directly related. Leave to reapply is not an extension of any applicable time limit.

Issues

Should the landlord's Two Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Is the tenant entitled to recover the filing fee?

Background & Evidence

The tenancy for this two-bedroom basement unit began in January 2021. The current monthly rent is \$1200.00 and is payable on the 1st day of each month.

On May 13, 2023, the landlord served the tenant with a Two Month Notice dated May 12, 2023. The Two Month Notice was issued on the grounds that the landlord or the landlord's spouse has a good faith intention to occupy the rental unit.

On behalf of the landlord, the landlord's daughter submits as follows:

- the tenant and her roommate are constantly getting into arguments.
- the landlord has attempted to resolve the issues but with no success.
- the landlord just does not want the headache of having tenants any longer as they need additional space for themselves.
- There is a mom, dad and three grown siblings living upstairs and they have been using bedrooms as office space.

The tenant is disputing the Two Month Notice on the grounds that it was not issued in good faith. The tenant submits as follows:

- In April 2023, the landlord attempted to raise the rent from \$1200.00 to \$1400.00.
- The landlord threatened to issue a Two Month Notice if the tenant did not agree to the rent increase.
- The tenant submitted text message correspondence with the landlord in which the landlord stated that rents in the area were going for \$1800.00 so they would be raising her rent to \$1400.00.
- The landlord also had discussions with her roommate to takeover the lease after she vacated. Text message correspondence with the roommate was submitted in support.

Analysis

Section 49 of the Act contains provisions by which a landlord may end a tenancy for landlord's use of property by giving notice to end tenancy. Pursuant to section 49(8) of the Act, a tenant may dispute a Two Month Notice by making an application for dispute resolution within fifteen days after the date the tenant received the notice. If the tenant

makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the Two Month Notice.

Further, Two Month Notices have a good faith requirement. *Residential Tenancy Policy Guideline #2* "Good Faith Requirement when Ending a Tenancy" provides the following guidance:

A claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End the 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 they do not have an ulterior motive for ending the tenancy.

The landlord did not dispute the testimony and text message evidence submitted by the tenant indicating the landlord attempted to raise the rent by \$200.00 per month less than one month prior to issuing the Two Month Notice. I find this not to be in harmony with the landlord's testimony that they no longer wanted the headache of having tenants and wished to use the rental space themselves. The landlord also had discussions with the tenant's roommate to try to get her to take over the lease from the tenant. This is also inconsistent with the landlord having a good faith intention to occupy the unit for themselves.

I find that there is sufficient evidence of an ulterior motive to end the tenancy on the part of the landlord. The landlord has failed to establish that he does not have an ulterior motive for ending the tenancy and that he truly intends to use the rental unit for the purpose stated in the Notice.

Conclusion

I allow the tenant's application to cancel the landlord's Two Month Notice, dated May 12, 2023, which is hereby cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

The tenant is entitled to recover the \$100.00 filing fee from the landlord and may reduce this amount from a future 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: August 22, 2023

Residential Tenancy Branch