



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes For the Tenant: CNL, MNDCT, DRI, FFT
For the Landlord: OPL, FFL

Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear a cross application regarding the above-noted tenancy.

The Tenant's application pursuant to the Act is for:

- cancellation of a Two Month Notice to End Tenancy for Landlord's Use (the Notice), issued pursuant to section 49;
- a monetary order for compensation for damage or loss under the Act, Residential Tenancy Regulation, tenancy agreement, pursuant to section 67;
- an order to dispute a rental increase, pursuant to section 43; and
- an authorization to recover the filing fee for this application, under section 72.

The Landlord's application pursuant to the Act is for:

- an order of possession under the Notice, pursuant to sections 49 and 55; and
- an authorization to recover the filing fee for this application, under section 72.

Tenant PW (the Tenant) and landlord TX (the Landlord) attended the hearing. The Landlord was assisted by translator JX and agent GS. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The parties each confirmed receipt of the Proceeding Package.

Based on the testimonies I find that each party was served with the Proceeding Package in accordance with section 89 of the Act.

Preliminary Issue - Unrelated Claims

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an application for dispute resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the Notice and the continuation of this tenancy is not sufficiently related to any of the Tenant's other claims to warrant that they be heard together.

The Tenant's other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the notice. I exercise my discretion to dismiss all of the Tenant's claims with leave to reapply except cancellation of the notice to end tenancy which will be decided upon.

Issues to be Decided

Is the tenant entitled to:

1. Cancellation of the Notice?
2. An authorization to recover the filing fee?

Is the landlord entitled to:

1. Is the landlord entitled to an order of possession?
2. An authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the evidence of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the Tenant's claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the Landlord's obligation to present the evidence to substantiate the Notice.

Both parties agreed the ongoing tenancy started on July 1, 2018. Monthly rent is due on the first day of the month. The landlord collected and currently holds in trust a security deposit of \$1,050.00. The tenancy agreement was submitted into evidence.

Both parties agreed the Tenant received the Notice on September 25, 2023.

The Tenant disputed the Notice on October 6, 2023.

The Tenant submitted a copy of the Notice into evidence. It is dated September 19, 2023, the effective date is November 30. It states the Landlord will move to the rental unit.

The Landlord affirmed that she served the Notice because her mother plans to move to the unit and the agent mistakenly mentioned in the Notice that the Landlord plans to move to the unit.

The Landlord stated that her mother lives in the USA with her son JX and that JX was transferred to work elsewhere and her mother can not move with him. The Landlord testified that her mother cannot live independently, as she does not speak English well and has health issues (insomnia and high blood pressure).

The Landlord said that she lives 1.9 kilometres from the rental unit and will be able to assist her mother when she moves to the rental unit.

The Tenant's application states: "1. The landlord for ending the tenancy has dishonest motives and is not in good faith. The owner has no reason has to move back in from their big house, and she also has another rental unit in the same building 2. The landlord notified the rental agent the reason for ending the rental tenancy is major renovation 3. The communication with the owner suggested no real renovation or move back in plans".

The Tenant does not believe the Landlord's testimony. The Tenant affirmed that as the Landlord admits her mother cannot live independently, the Landlord's mother cannot live in the rental unit alone.

The Tenant believes the Landlord served the Notice because her rent is below the current market rent.

The Tenant stated the Landlord's mother does not have a visa to live permanently in Canada.

The Tenant submitted a text message received on September 17, 2023 from the Landlord: "The property has aged, and I'm considering a major renovation to enhance its functionality and aesthetics. After the renovations, I plan to use it as a family residence."

The Landlord testified that she only intends to do minor touch-ups, not a major renovation and that she mentioned major renovation in the text message because her English is limited.

Analysis

Section 49(8)(a) allows the tenant to dispute a 2 month Notice within 15 days after the date the tenant received it. Based on the undisputed testimony, I find the Tenant disputed the Notice within the timeframe of section 49(8)(a) of the Act.

Pursuant to Rule of Procedure 6.6, the landlord has the onus of proof to establish, on the balance of probabilities, that the Notice to end tenancy is valid.

RTB Policy Guideline 2A states that when issuing a notice under section 49 of the Act the landlord must demonstrate there is not an ulterior motive for ending the tenancy: “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 motive for ending the tenancy, and they are not trying to avoid obligations under the RTA and MHPTA or the tenancy agreement.”

In *Gallupe v. Birch*, 1998 CanLII 1339, the British Columbia Supreme Court states: “[35] I conclude from the observations of Taylor J.A. and Melvin J. that a consideration of dishonest motive or purpose is a matter that should be undertaken in a consideration of the good faith of a landlord in serving an eviction notice under s. 38(3). When the question of good faith is put in issue by a tenant, the arbitrator (or panel, if on a review) should consider whether there existed a fundamentally dishonest motive or purpose that could affect the honesty of the landlord's intention to occupy the premises. In such circumstances, the good faith of a landlord may be impugned by that dishonest motive or purpose.”

I find the Landlord's testimony non-convincing. The Landlord specifically mentioned in the September 17, 2023 message that she intends to do a major renovation in the rental unit to “enhance its functionality and aesthetics”. The Landlord was assisted by a translator during the hearing and could communicate well with the assistance of the translator. The text message is very clear and written in perfect English.

The Tenant specifically mentioned in the application that she does not believe the Landlord served the Notice in good faith, the Landlord did not provide documentary evidence to prove her reasons to end the tenancy and provided a vague and non-convincing testimony during the hearing.

Considering all the above, I find the Landlord failed to prove, on a balance of probabilities, that she intends, in good faith, to occupy the rental unit. I find the Notice was issued with ulterior motives.

Accordingly, the Notice is cancelled and of no force or effect.

I authorize the Tenant to recover the \$100.00 filing fee, as the Tenant was successful in this application.

Conclusion

The Notice is cancelled and of no force or effect. This tenancy will continue in accordance with the Act.

Pursuant to section 72(2)(a), the Tenant is authorized to deduct \$100.00 from the next rent payment to recover the filing fee.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: December 19, 2023

Residential Tenancy Branch