



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on February 19, 2018 (the "Application"). The Tenants applied to dispute a Two Month Notice to End Tenancy for Landlord's Use of Property dated February 2, 2018. The Tenants also sought reimbursement for the filing fee.

Tenant M.P.B. (the "Tenant") appeared at the hearing and confirmed at the outset that she was appearing as agent for all Tenants. The Landlord appeared at the hearing. The hearing process was explained to both parties and neither party had questions about the proceedings when asked.

It is my understanding from the evidence that the Tenant named her son on the Application. It is also my understanding that the Tenant's son is a minor and because of this I have removed the name of the Tenant's son from the style of cause.

I addressed service of the hearing package and evidence. The Landlord confirmed he received the hearing package and Tenants' evidence in February. The Landlord said he did not serve his evidence on the Tenants. I allowed each party to provide their position on whether the Landlord's evidence should be admitted or excluded.

Rule 3.15 of the Rules of Procedure (the "Rules") states that a respondent must serve their evidence on the applicants. Rule 3.17 of the Rules states that evidence not provided to the other party in accordance with rule 3.15:

may or may not be considered depending on whether the party can show to the arbitrator that it is new and relevant evidence and that it was not available at the time that their application was made or when they served and submitted their evidence. The arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established above provided that the acceptance of late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice.

The Landlord acknowledged his evidence was not new evidence that was unavailable prior to the hearing. I note the Landlord's evidence was submitted to the Residential Tenancy Branch (the "Branch") on March 2, April 4 and April 18 of 2018. In my view, there was no reason the Landlord could not have served his evidence on the Tenants prior to the hearing. I excluded the Landlord's evidence pursuant to rule 3.17 as it was my view that admitting the evidence would prejudice the Tenants and result in a breach of the principles of natural justice given that it was not served on the Tenants prior to the hearing.

I acknowledge the Landlord's evidence included text messages sent to one of the Tenants and therefore that tenant would likely have been aware of the contents of the evidence prior to the hearing. However, I cannot conclude the remaining tenants would have been aware of the text messages and the Tenant said she was not aware of them. In my view, it is not sufficient that one of the four tenants would have been aware of the text messages and this does not change my opinion that admitting these would have been prejudicial to the Tenants.

During my review of the evidence received, the Tenant said she had submitted a rent receipt at the same time she submitted a copy of the Two Month Notice. I did not receive a rent receipt as part of the Tenant's evidence. The Landlord had not received a rent receipt with the hearing package and Tenants' evidence. I note rule 3.18 of the Rules would have allowed me to adjourn the hearing to receive the rent receipt if the Tenant had shown that the evidence was submitted but was not received. I did not adjourn the hearing for two reasons. First, I was not satisfied from the evidence of the Tenant that the Tenants did in fact submit a rent receipt given that the Landlord did not receive a rent receipt either. Second, I could not see the relevance of a rent receipt to the issues before me in the Application.

I told the Tenant I was not sure of the relevance of the rent receipt and asked that she let me know during the hearing of the relevance and we would further address the issue of the missing evidence at that time. The Tenant never brought up the rent receipt again. The relevance of the rent receipt did not become apparent to me during the hearing.

I offered the parties an opportunity to discuss settlement during the hearing pursuant to section 63 of the *Act*. The Landlord was agreeable to discussing settlement. The Tenant said she could not agree to anything without talking to her husband, Tenant R.B. The Tenant asked if she could call her husband and have him join the conference call. It was approximately 30 minutes into the hearing at this point. I told the Tenant we would not be stopping the hearing to allow her to call her husband given that she called in as agent for all Tenants and we were already 30 minutes into the hearing. I told the parties we would proceed and I would decide the matter.

Issue to be Decided

1. Should the Two Month Notice be cancelled?

Background and Evidence

The only documentary evidence I received from the Tenants was a copy of the Two Month Notice. The Tenant provided affirmed testimony during the hearing.

None of the Landlord's documentary evidence was admissible. The Landlord provided affirmed testimony during the hearing.

The parties were given an opportunity to present relevant oral evidence, make relevant submissions and ask relevant questions. I have considered the Two Month Notice and all oral testimony provided. I will only refer to the evidence I find relevant in this decision.

The Landlord said he owns the rental unit with his wife. The Tenant did not take issue with this. The parties agreed there is an oral tenancy agreement between the Landlord and Tenants regarding the rental unit. The parties said the agreement did not originally include Tenant H.K. The parties said the tenancy started June 6, 2015 and that the agreement changed to include Tenant H.K. around October 6, 2016. The parties agreed they did not discuss whether the tenancy was a fixed term tenancy or periodic tenancy. The parties agreed the rent was originally \$1,000.00. The parties said the rent increased when Tenant H.K. moved in to \$1,100.00 and increased again to the current amount of \$1,150.00. The parties agreed rent is due on the sixth of every month. Both parties said they did not discuss any additional terms of the tenancy.

The Landlord testified that he posted the Two Month Notice on the door of the rental unit on February 2, 2018 and sent a text message regarding this. The Tenant did not dispute that the Landlord posted the Two Month Notice on the door of the rental unit on February 2, 2018. The Tenant said she believed she received the Two Month Notice in February but could not recall what date. She said she thought the Two Month Notice was posted on the door of the rental unit when she received it.

The Tenant said she filed the Application in February but she did not know what date. She said she applied online and paid the filing fee on the same day. The records of the Branch show that the Tenant filed the Application and paid the filing fee on February 19, 2018.

I reviewed the Two Month Notice during the hearing. The copy of the Two Month Notice submitted by the Tenants was not dark enough for me to see the date of the Two Month Notice, the effective date or whether the Landlord signed the Two Month Notice. Nor could I see what was indicated in the service section. The Landlord said the effective date is April 5, 2018. The Landlord confirmed he signed the Two Month Notice and dated it February 2, 2018. The Landlord said the service section indicates the Two Month Notice was served "On the door or in mail box or mail slot" on February 2, 2018. The Tenant could not confirm any of this information because she did not recall the information and did not have a copy of her evidence with her during the hearing. Given the Tenant could not confirm this information, I asked the Landlord to

submit a clear copy of the Two Month Notice by 4:00 p.m. on the hearing date. The Landlord did so.

I have reviewed the Two Month Notice submitted by the Landlord and note the following. It is addressed to the Tenant and Tenant R.B. and refers to the rental unit address. It has an effective date of April 5, 2018. It is signed by the Landlord and dated February 2, 2018. The service section indicates the notice was served "On the door or in mail box or mail slot" on February 2, 2018. The grounds for the Two Month Notice are that "[t]he rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse)".

In relation to the grounds for the Two Month Notice, the Landlord said his mother-in-law and sister-in-law are taking over the rental unit. The Landlord said he and his wife entered into a tenancy agreement with his mother-in-law and sister-in-law regarding the rental unit on October 6, 2017. In relation to the date of the tenancy agreement with his mother-in-law and sister-in-law, I understood the Landlord's evidence to be that they had been okay with waiting while the Tenants looked for a new place. The Landlord also said he had realised he needed to serve the Tenants with the Two Month Notice and did so. He said his mother-in-law and sister-in-law are currently living in the upper part of the house with him and his wife. The Landlord said it is still his intent to have his mother-in-law and sister-in-law move into the rental unit once the Tenants move out. The Landlord confirmed his mother-in-law and sister-in-law will be tenants under the same tenancy agreement and that the agreement will relate to the entire rental unit.

The Tenant said the Tenants are looking for a new place. She said they do not want to take their son out of school in the middle of the year. She said moving is not an issue. The issue is taking their son out of school. She said the Tenants would be gone by September.

I asked the Tenant if she was disputing that the Landlord intended to have his mother-in-law and sister-in-law move into the rental unit. At first, she said she did not take issue with this evidence. She then said she believes problems started when her brother, Tenant H.K., moved in. She also said the Landlord wanted to increase the rent but the Tenants did not agree to the increase. She said the Landlord wanted to increase the rent to \$1,200.00 but the parties settled on \$1,150.00. I understood from her evidence that the Tenant did not necessarily believe that the Landlord's mother-in-law and sister-in-law were moving into the rental unit. The Tenant said she is disputing that the Landlord's mother-in-law and sister-in-law have moved into the upper part of the house because she never sees them and has not seen anyone move in. The Tenant then said she has seen the Landlord's mother-in-law at the house all the time in the past. I understood the Tenant to be saying that the Landlord's mother-in-law did not just move in to the upper part of the house.

In response, the Landlord said his mother-in-law used to be at the house all the time because she looked after his children. He said she did not live there. He said his mother-in-law and sister-in-law now live at the house. The Landlord said the property is such that it is possible the

Tenants were not aware that his mother-in-law and sister-in-law moved in. He said the Tenants would only see his mother-in-law and sister-in-law in the back.

The Tenant agreed the property is such that the Landlord's mother-in-law and sister-in-law could have moved in without the Tenants knowing.

The Landlord said he had accepted March and April rent since issuing the Two Month Notice. The Landlord said he did not provide receipts for this rent as it was paid by e-transfer. The Tenant confirmed she understood the Landlord wanted the Tenants to vacate the rental unit despite accepting rent for March and April. Both parties agreed the Tenants have paid rent until May 5, 2018 and that the next rent payment is due May 6, 2018.

Analysis

I accept the evidence of both parties that the Landlord and Tenants entered into an oral tenancy agreement regarding the rental unit on June 6, 2015 and, in relation to Tenant H.K., on October 6, 2016. I accept the evidence of both parties that there was no agreement between the Landlord and Tenants about the term of the tenancy and therefore I find that this was not a fixed term tenancy. I accept the evidence of the parties that rent is due on the sixth of every month.

Section 49 of the *Residential Tenancy Act* (the "Act") applies where a landlord wants to end a tenancy so that the landlord or a close family member can occupy the rental unit. The relevant portions of section 49 state:

49 (1) In this section:

"close family member" means, in relation to an individual,

- (a) the individual's parent, spouse or child, or
- (b) the parent or child of that individual's spouse;

...

"landlord" means

- (a) for the purposes of subsection (3), an individual who
 - (i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and
 - (ii) holds not less than 1/2 of the full reversionary interest, and

...

(2) Subject to section 51...a landlord may end a tenancy for a purpose referred to in subsection (3), (4), (5) or (6) by giving notice to end the tenancy effective on a date that must be

(a) not earlier than 2 months after the date the tenant receives the notice,

(b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and

...

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

...

(7) A notice under this section must comply with section 52...

(8) A tenant may dispute a notice under this section by making an application for dispute resolution within 15 days after the date the tenant receives the notice.

...

In relation to section 49(7) of the *Act*, section 52 of the *Act* outlines the requirements regarding the form and content of a notice to end tenancy and states:

52 In order to be effective, a notice to end a tenancy must be in writing and must

(a) be signed and dated by the landlord...

(b) give the address of the rental unit,

(c) state the effective date of the notice,

(d) ...state the grounds for ending the tenancy,

(d.1) ... and

(e) when given by a landlord, be in the approved form.

I accept the Landlord's evidence that he served the Tenants with the Two Month Notice by posting it on the door of the rental unit given that the Tenant did not dispute this and said she thought the Two Month Notice was posted on the door when she received it. I find the Landlord served the Two Month Notice on the Tenants in accordance with section 88(g) of the *Act*.

I accept the Landlord's evidence that he posted the Two Month Notice on February 2, 2018 as the Tenant did not dispute this. The Tenant did not know what date in February the Tenants received the Two Month Notice. In the absence of evidence regarding when the Two Month Notice was received by the Tenants, section 90 of the *Act* deems it received three days after it was posted to the door of the rental unit which would be February 5, 2018.

Pursuant to section 49(8) of the *Act*, the Tenants had 15 days from February 5, 2018 to dispute the Two Month Notice. Based on the records of the Branch, I find the Tenants filed the

Application and paid the filing fee on February 19, 2018. I find the Tenants did dispute the Two Month Notice within the time limit set out in section 49(8) of the *Act*.

I have reviewed the copy of the Two Month Notice submitted by the Landlord and find that it complies with section 52 of the *Act* as required by section 49(7) of the *Act*.

Pursuant to rule 6.6 of the Rules, the Landlord has the onus to prove the reason for the Two Month Notice on a balance of probabilities.

I found the Landlord's testimony throughout the hearing to be credible. I accept the evidence of the Landlord that he issued the Two Month Notice because his mother-in-law and sister-in-law intend to move into the rental unit once the Tenants move out. I accept the Landlord's evidence that he and his wife entered into a tenancy agreement with his mother-in-law and sister-in-law and I find that this supports his stated intention regarding the rental unit. I accept the Landlord's evidence that his mother-in-law and sister-in-law are currently living in the upper part of the house and I find this also supports his stated intention.

In my view, the Tenants disputed the Two Month Notice because they do not want to move out of the rental unit while their son is still in school. I find this for two reasons. First, as stated by the Tenant, the Tenant does not take issue with moving out of the rental unit she simply does not want to move until her son is done school for the year. Second, when I asked the Tenant for her evidence and submissions regarding the Application, the submissions she made related to not wanting to move until her son is done school for the year. Simply not wanting to move is not a valid reason to dispute a Two Month Notice.

It was not until I specifically asked if the Tenant accepted the Landlord's evidence that his mother-in-law and sister-in-law were moving into the rental unit that the Tenant brought up that there have been problems since her brother moved in and the rent increase issue. I do not accept that the Landlord is seeking to evict the Tenants because of issues that started when Tenant H.K. moved in given he moved in around October 6, 2016 and the Two Month Notice was issued on February 2, 2018. Further, I do not accept that the Landlord is seeking to evict the Tenants due to the rent increase issue. The Tenant's evidence was that the Landlord wanted to increase the rent to \$1,200.00 but the Tenants did not agree and so the parties settled on an increase to \$1,150.00. I do not accept that the Landlord would seek to evict the Tenants based on a \$50.00 difference in the rent increase he requested and the rent increase the Tenants agreed to. Further, I do not accept that the Landlord would seek to evict the Tenants due to the rent increase issue when the Landlord agreed to the increase to \$1,150.00.

The Tenant took issue with the evidence of the Landlord that his mother-in-law and sister-in-law had moved into the upper part of the house on the basis that the Tenant never sees the mother-in-law or sister-in-law. However, the Tenant agreed that the Landlord's mother-in-law and sister-in-law could have moved into the upper part of the house without the Tenants' knowing. I

accept the evidence of the Landlord on this point and do not find that the Tenant's evidence or submissions cause me to question the Landlord's evidence.

Based on the above, I accept that the Landlord issued the Two Month Notice because his mother-in-law and sister-in-law intend to move into the rental unit once the Tenants move out. I note the Landlord's mother-in-law falls under the definition of "close family member" in section 49(1) of the *Act*. Therefore, I find the Landlord is entitled to end the tenancy pursuant to section 49(3) of the *Act* as a close family member of the Landlord intends in good faith to occupy the rental unit. I do not find the fact that the Landlord's sister-in-law also intends to move into the rental unit to change the analysis because I accept the evidence of the Landlord that he intends to rent the unit to both his mother-in-law and sister-in-law under one tenancy agreement that covers the entire unit. In these circumstances, it is my view that the Landlord is entitled to end the tenancy. Therefore, I dismiss the Tenants' Application and uphold the Two Month Notice.

The effective date on the Two Month Notice is April 5, 2018. I find this date complies with section 49(2) of the *Act* as it is two months after the Tenants received the Two Month Notice and is the day before the day in the month that rent is payable under the oral tenancy agreement.

I acknowledge that the Landlord accepted rent after the Two Month Notice was issued and that in some circumstances doing so could reinstate the tenancy. However, the Tenant testified that she understood that the Landlord wanted the Tenants to vacate the rental unit despite accepting rent for March and April. Therefore, I do not find that the Landlord reinstated the tenancy by accepting rent for March and April in this case.

Section 55(1) of the *Act* states:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52...and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

As stated above, I dismiss the Tenants' Application. Further, I have found the Two Month Notice complies with section 52 of the *Act*. Therefore, pursuant to section 55(1) of the *Act*, I grant the Landlord an Order of Possession for the rental unit. Given the effective date of the Two Month Notice has passed, the Order will be effective two days after service on the Tenants. I acknowledge that the Tenants have paid rent until May 5, 2018 but note that the Order will not be enforceable prior to this date by the time the Landlord receives this decision and the Order.

As I advised the Landlord at the end of the hearing, it is up to the Landlord to decide when to serve the Order on the Tenants and when to enforce the Order after the two-day timeframe expires. If the Landlord chooses to wait to serve or enforce the Order, the Landlord is entitled to payment from the Tenants for use and occupancy of the rental unit. However, any payments made to the Landlord by the Tenants for use and occupancy will not reinstate the tenancy. As per my decision, the tenancy is ended and will not be reinstated unless the Landlord and Tenants enter into a new written tenancy agreement regarding the rental unit.

Pursuant to section 51(1) of the *Act*, the Tenants are entitled to receive the equivalent of one month's rent payable under the tenancy agreement from the Landlord. If the Landlord serves and enforces the Order immediately, the Landlord will need to refund one month's rent to the Tenants. The Landlord will also need to refund any rent paid for the period after the Tenants are required to vacate the rental unit. If the Landlord waits one month to serve and enforce the Order, the Landlord should not collect any payment from the Tenants for that one month. If the Landlord waits two months to serve and enforce the Order, the Landlord should only collect payment for use and occupancy of the rental unit for one month. If either party has questions regarding this, they should call the Branch and speak to an Information Officer. Given the Tenants were not successful in this application, I decline to award them reimbursement for the filing fee.

Conclusion

The Tenants' Application is dismissed. The Two Month Notice is upheld. The Landlord is granted an Order of Possession for the rental unit. The Order is effective two days after service on the Tenants. The Order must be served on the Tenants and, if the Tenants do not comply with the Order, it may be filed and enforced in the Supreme Court as an order of that Court.

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: May 07, 2018

Residential Tenancy Branch