



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CRESTWELL REALTY INC. FOR ROWBOAT INVESTMENTS LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL MNDCT FFT

Introduction

This hearing dealt with the tenant's application pursuant to section 67 of 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;
- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to recover the filing fee for this application from the respondent, pursuant to section 72.

Both parties were represented by their legal counsel in this hearing. The landlord's agent, EK, was also in attendance. Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions.

The landlord confirmed receipt of the tenant's application. In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenant's application. As all parties confirmed receipt of each other's evidentiary materials, I find that these were duly served in accordance with section 88 of the *Act*.

As the tenant confirmed receipt of the 2 Month Notice dated March 29, 2019, which was personally served on April 1, 2019, I find that this document was duly served to the tenant in accordance with section 88 of the *Act*.

Issues(s) to be Decided

Is the tenant entitled to monetary compensation for loss, or other money owed under the *Act*, regulation or tenancy agreement?

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.

This month-to-month tenancy began on August 1, 2010. Monthly rent is currently set at \$1,975.00, payable on the first of the month. The landlord collected a security deposit amount of \$825.00, which is still held by the landlord.

The landlord issued the 2 Month Notice dated March 29, 2019, with an effective move-out date of June 30, 2019, for the following reason:

"The landlord that is a family corporation, and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit."

The landlord provided the following submissions for why they issued the 2 Month Notice. The landlord issued the 2 Month Notice as the landlord's 23 year old son has completed his university studies, and will be moving to this rental unit in order to live independently, but still remain in close proximity to his family. The location of the home will also allow the son to fulfil his other familial and work obligations, as well as allow him to be closer in proximity to the facilities that he frequents. The landlord provided a sworn affidavit in their evidence in support of these statements. The landlord submitted that there are no other vacant units in the home except for housekeeping units, which are smaller rooms with shared bathrooms.

EK, the property manager, provided sworn testimony in this hearing. EK testified that 6 months ago, it came to his attention from another tenant in the home that the tenant has engaged in the unauthorized use of the electricity on the property in order to charge her electric vehicle. EK testified that the landlord had attempted to discuss the matter with the tenant, which involved the request for compensation from the tenant, which resulted in a heated conversation. EK submitted that the matter remains unresolved.

The tenant is disputing the good faith of the landlord in issuing the 2 Month Notice. The tenant questions why her specific rental unit was chosen, considering the number of units the landlord owns, and how disruptive this move would be for her. The tenant utilizes her home for her business, and is a long-term tenant. The tenant also questions the credibility of the landlord and landlord's son as it is undisputed that the son has never seen her actual rental unit.

The tenant also made a monetary claim in the amount of \$4,591.26 for the financial losses she would incur if this tenancy were to end. The tenant submits that the impact on her business would be substantial, and is requesting compensation for these losses.

Analysis

Subsection 49(4) of the *Act* sets out that a landlord that is a family corporation may end a tenancy in respect of a rental unit if a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit, which is the reason for why the landlord issued the 2 Month Notice. The tenant disputes this notice, citing that the landlord did not issue the Notice in good faith.

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."

Although the landlord stated that they had issued the 2 Month Notice in order for the son to occupy the suite, I find that the tenant has raised doubt as to the true intent of the landlord in issuing this notice, in particular the question of why her specific unit was chosen. The landlord's witness, EK, testified to the fact that the landlord had discovered within the last 6 months that the tenant has been charging her electric vehicle, without

the landlord's knowledge and permission. EK testified that this discovery has resulted in some tension over the issue, which has involved heated conversations and disputes over whether the tenant owes the landlord additional compensation for the usage of the electricity.

I find that the landlord has not met their burden of proof to show that son would be occupying this home, and that is the only reason for ending this tenancy. I find that the testimony of both parties during the hearing raised questions about the landlord's good faith, particularly the testimony about the dispute arising from the discovery of the tenant's usage of electricity to charge her electric vehicle. Despite the explanation provided about why the son would be moving into the home, I find that the landlord has not met their burden of proof to show that they do not have any other purpose in ending this tenancy. Based on a balance of probabilities and for the reasons outlined above, I find that the landlord has not met their onus to show that the son plans on occupying the home, and that there is no ulterior motive for ending this tenancy.

I therefore allow the tenant's application to cancel the 2 Month Notice. The 2 Month Notice dated March 29, 2019 is hereby cancelled, and is of no force or effect. The tenancy will continue until ended in accordance with the *Act*.

The tenant also applied for monetary compensation under the *Act*.

Under the *Act*, a party claiming a loss bears the burden of proof. In this matter the tenant must satisfy each component of the following test for loss established by **Section 7** of the *Act*, which states;

Liability for not complying with this Act or a tenancy agreement

7 (1) *If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*

(2) *A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

The test established by Section 7 is as follows,

1. Proof the loss exists,

2. Proof the loss was the result, *solely, of the actions of the other party (the landlord)* in violation of the *Act* or Tenancy Agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof the claimant (tenant) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

Therefore, in this matter, the tenant bears the burden of establishing their claim on the balance of probabilities. The tenant must prove the existence of the loss, and that it stemmed directly from a violation of the tenancy agreement or a contravention of the *Act* on the part of the other party. Once established, the tenant must then provide evidence that can verify the actual monetary amount of the loss. Finally, the tenant must show that reasonable steps were taken to address the situation to *mitigate or minimize* the loss incurred.

I find the tenant has failed to provide sufficient evidence to support the value of any losses, and how they are directly and solely due to the landlord's failure to comply with the *Act*, tenancy agreement, or any Orders of an Arbitrator. On this basis, I dismiss the tenant's application for monetary compensation without leave to reapply.

I allow the tenant to recover half of the filing fee for this application as she was partially successful in her application.

Conclusion

The tenant's application to cancel the landlord's 2 Month Notice is allowed. The landlord's 2 Month Notice, dated March 29, 2019, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

I allow the tenant to implement a monetary award of \$50.00 for recovery of the filing fee, by reducing a future monthly rent payment by that amount. In the event that this is not a feasible way to implement this award, the tenant is provided with a Monetary Order in the amount of \$50.00, and the landlord(s) must be served with **this Order** as soon as possible. Should the landlord(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The remainder of the tenant's application is dismissed without leave to reapply.

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 5, 2019

Residential Tenancy Branch