



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL,OLC,MNDCT, FFT

Introduction

This hearing dealt with two Applications for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the “Act”), to cancel Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Notice”) issued on September 21, 2022, to have the landlord comply with the Act, for monetary compensation for money owed or loss and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated several matters of dispute on the Applications for Dispute Resolution, the most urgent of which is the application to set aside the Notice. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenant’s request to set aside the Notice and the request to recover the filing fee. The balance of the tenant’s applications are dismissed, with leave to reapply.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving sufficient evidence to terminate the tenancy for the reasons given on the Notice.

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

Issues to be Decided

Should the Notice be cancelled?

Background and Evidence

The tenancy began on December 15, 2009. Rent in the amount of \$1,760.00 was payable on the 15th of each month. The tenant paid a security deposit of \$640.00.

The parties agreed that the Notice was served on the tenant indicating that the tenant is required to vacate the rental unit on December 16, 2022.

The reason stated in the Notice was that:

- The 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). **The child of the landlord or landlord's spouse.**

The landlord's agent testified that they served the tenant with the Notice, and they want the premises to occupy.

The tenant's agent testified that the landlord only issued the Notice because on August 25, 2022, they informed the landlord that they need to deal with the lower occupant who is constantly banging on their ceiling, which is their floor causing unreasonable noise and the loss of quiet enjoyment, or that they would make an application for dispute resolution to have the landlord comply with the Act.

The tenant's agent testified the landlord did nothing to address their concerns and the only response they get from the landlord is to move or threaten that they will sell the house. The agent stated that the landlord has also said that they are scared of the lower occupant.

The landlord's agent argued that both tenants complain about each other, which is not relevant. The agent stated that they want to the premises for their family.

The landlord written submission reads as follows: "My father is the spouse of the landlord; my two siblings are the son and daughter of the landlord. They are currently renting a place and they would like to move back to the premise".

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

How to end a tenancy is defined in Part 4 of the Act. Section 49(1) of the Act a landlord may end a tenancy by giving notice to end the tenancy.

I have considered all of the written and oral submissions submitted at this hearing, I find that the landlords has provided sufficient evidence to show that:

- The 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)

The tenant raised the issue of "good faith". 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 purpose for ending the tenancy, **and they are not trying to avoid obligations under the RTA** or the tenancy agreement.

In this case, I am not satisfied that the landlord's close family member intends to occupy the premises. The landlord's agent provided very little details at the hearing. If I accept landlord's written submission, which I do not, at the very least I would expect to see a copy of their signed tenancy agreement, and proof they gave notice to end their tenancy.

I find it more likely than not that the Notice was not issued in "good faith". Rather, I find it more likely than not that the landlord is attempting to avoid their obligation under the Act to ensure the tenant's rights to quiet enjoyment are protected. The tenant over an extended period of time has requested the landlord deal with the lower occupant, who they allege is breaching their rights to quiet enjoyment.

On August 25, 2022, the tenant put the landlord on notice that they would be making an application for dispute resolution to have the landlord comply with the Act, which was filed on September 28, 2022, and the next day, September 29, 2022, the landlord issued the Notice.

Therefore, I grant the tenant's application to cancel the Notice. The tenancy will continue until legally ended. As the tenant was successful with their application I grant the tenant the cost of their filing for this single application. I authorize the tenant a onetime rent reduction in the amount of **\$100.00** to be deducted from a future rent payable to the landlord.

Conclusion

The tenant's application to cancel the Notice, is granted. The tenant is authorized a onetime rent reduction in the amount of \$100.00 from a future rent payable to the landlord. The balance of the tenant's applications are dismissed with 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: November 21, 2022

Residential Tenancy Branch