



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NUSTREAM REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, FFT

Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a residential tenancy dispute. On October 3, 2022 the tenant applied for:

- an order to cancel a Two Month Notice for Landlord's Use, dated September 24, 2022 (the Two Month Notice); and
- the filing fee.

The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and Rule 7.4 requiring evidence to be presented.

Neither party raised an issue regarding service of the hearing materials.

Issues to be Decided

- 1) Is the tenant entitled to an order cancelling the Two Month Notice?
- 2) If not, is the landlord entitled to an order of possession?
- 3) Is the tenant entitled to the filing fee?

Background and Evidence

While I have considered the presented documentary evidence and testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties agreed on the following particulars of the tenancy. It began June 30, 2021; rent is \$2,450.00, due on the first of the month; and the tenant paid a security deposit of \$1,225.00, which the landlord holds in trust.

The landlord testified they served the Two Month Notice on the tenant by registered mail on September 24, 2022; the tenant confirmed she received it 2 or 3 days later.

A copy of the Two Month Notice was submitted as evidence. It is signed and dated by the landlord, gives the address of the rental unit, states an effective date, states the grounds for the Notice, and is in the approved form. The Notice indicates the tenancy is ending because the landlord or the landlord's spouse will occupy the unit.

The landlord's representative testified that the landlord is seeking possession of the unit as they have two small children who have reached school age, and the landlord "is thinking" of having them attend school in the area of the unit, so the family plans to move in. No documentary evidence was presented in support.

The tenant testified that on August 28, 2022 she received a text message from the property manager, stating that the landlord would like to raise the rent to \$3,300.00. A copy of the text message is submitted as evidence. The tenant declined, stating that it was an increase over the legal limit. The tenant testified that she received no further communication from the landlord until service of the Two Month Notice in September 2022.

The tenant testified that she questioned the motive of the landlord, and submitted that the landlord had submitted minimal evidence in support of their claim. The tenant noted the landlord's representative stated that the landlord is "thinking" of having their children attend school near the rental unit. The tenant submitted that she has two young children around the same age as the landlord's, and that if the landlord truly intended for their children to go to school near the rental unit, the children would have to already be enrolled.

The tenant testified that the unit has historically been a rental, that she gets "tons" of mail addressed to previous tenants, and that the fixtures are old.

The landlord did not attend the hearing and did not provide a written submission in support of their claim they intend to reside in the rental unit with their family.

Analysis

Based on the testimony of the parties, I find the Two Month Notice served by registered mail and received by the tenant on September 27, 2022. I find the landlord served the tenant in accordance with section 88 of the Act.

As the tenant received the Two Month Notice on September 27, 2022 and applied to dispute it on October 3, 2022, I find the tenant met the 15-day deadline set out by section 49(8) of the Act.

As the Two Month Notice is signed and dated by the landlord, gives the address of the rental unit, states an effective date, states the reason for ending the tenancy, and is in the approved form, I find it meets the form and content requirements of section 52.

The standard of proof in a dispute resolution is on a balance of probabilities, which means it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

As described in Residential Tenancy Branch Rule of Procedure 6.6, when a tenant applies to dispute a notice to end tenancy, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice is based. And, as noted in Residential Tenancy Policy Guideline 2A: *Ending a Tenancy for Occupancy by Landlord, Purchaser, or Close Family Member*, when the issue of a dishonest motive or purpose for ending the tenancy is raised by a tenant, the onus is on the landlord to establish they are acting in good faith.

Policy Guideline 2A explains that 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 Act or the tenancy agreement.

Section 49(3) of the Act states:

(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.

The Two Month Notice, dated September 24, 2022, indicates the tenancy is ending as the rental unit will be occupied by the landlord or the landlord's spouse.

The landlord's representative submitted that the landlord intends to move into the unit as they have two small children who have reached school age, and the landlord "is thinking" of having them attend school in the area. No documentary evidence was presented in support.

The tenant testified she was served the Two Month Notice the month after she refused a rent increase above the legal limit, and submitted as evidence a text message from the property manager, which states the landlord seeks to increase the rent to \$3,300.00. This is an increase of \$850.00.

Based on the preceding, I find on a balance of probabilities that the landlord has not proven the reason for the Two Month Notice, and that the landlord did not serve the Two Month Notice in good faith.

Therefore, the Two Month Notice is cancelled, and the tenancy will continue until it is ended in accordance with the Act.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the tenant is successful in her application, I order the landlord to pay the \$100.00 filing fee the tenant paid to apply for dispute resolution.

Pursuant to section 72 of the Act, the tenant is authorized to make a one-time deduction of \$100.00 from a future rent payment in satisfaction of the above-noted award.

Conclusion

The tenant's application to dispute the Two Month Notice is granted.

The Two Month Notice for Landlord's Use is cancelled; the tenancy will continue until it is ended in accordance with the Act.

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: February 13, 2023

Residential Tenancy Branch