



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNL, RP, OLC, FF

Introduction

This hearing convened to deal with the tenant's application for dispute resolution (application) seeking remedy under the Residential Tenancy Act (Act). The tenant applied for an order cancelling the Two Month Notice to End Tenancy for Landlord's Use of Property (Notice or 2 Month Notice) issued by the landlord, an order requiring the landlord to make repairs to the rental unit, an order requiring the landlord to comply with the Act, regulations, or tenancy agreement, and recovery of the cost of the filing fee.

The tenant, the tenant's witness, the landlord, the landlord's spouse, and the landlord's representative (SH) attended the hearing, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process. The parties were affirmed and confirmed receipt of the other's evidence.

Thereafter the parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral, written, and other evidence before me that met the requirements of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). However, not all details of the parties' respective submissions and or arguments are reproduced in this Decision. Further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters-

Rule 2.3 states claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

In this case, I find the primary issue to be decided is consideration of the 2 Month Notice, as this determines whether the tenancy ends or continues. I find the tenant's request for orders as mentioned above is not related to the primary issue. I will, therefore, only consider the tenant's request to cancel the 2 Month Notice and recovery of the cost of the filing fee. The balance of the tenant's application is **dismissed**, with leave to re-apply.

Leave to reapply is not an extension of any applicable time limit.

Issue(s) to be Decided

Should the 2 Month Notice be cancelled or upheld?

Is the tenant entitled to recovery of the cost of the filing fee?

Background and Evidence

The tenancy began on or about December 1, 2021, and monthly rent is currently \$1,400. Filed in evidence was the written tenancy agreement.

The evidence shows that the landlord issued the tenant a 2 Month Notice. The Notice was dated November 30, 2022, for an effective move-out date of January 31, 2023. The tenant submitted in their application that they received the 2 Month Notice on November 30, 2022, when it was attached to their door.

The Notice listed as reason for ending the tenancy is that the rental unit will be occupied by the mother or father of the landlord or landlord's spouse. Filed in evidence was a copy of the 2 Month Notice.

In their application, the tenant wrote the following:

Disputing reason given for ending tenancy: "The rental unit will be occupied by the father or mother of the landlord or landlord's spouse." I do not believe this is

*true or in good faith. This reason was given to end the upstairs tenancy last year and (***)'s parents nor his wife's parents moved in. Now they rent the upstairs suite for \$5000-6000/month on Airbnb.*

It is my belief the landlord, (landlord's name), has a history of NOT acting in good faith. He has not been forthcoming with information about the upstairs being rented as an Airbnb from May '22-present. Instead of renting the downstairs suite to their parents, which is currently unsafe to access by anyone elderly, with mobility issues, I believe they want to charge more than the 1.5%/year increase for rent or use for an Airbnb/vacation rental.

[Reproduced as written except for anonymizing personal information to protect privacy]

Pursuant to section 7.18 of the Rules, the landlord through their representative proceeded first in the hearing to give submissions to support the Notice.

SH submitted the following: The mother of the landlord's spouse (mother) intends on living in the rental unit, which is in the lower level of the residential property. The mother, who has been a resident of Canada since 1997, currently lives with the landlord, their spouse, and children. In February 2022, the father of the landlord's spouse (father) was diagnosed with terminal cancer, and they wanted to return to their home country to live out their final days. The mother and father returned to their home country. In November 2022, the mother received a letter from Service Canada informing her that her benefits could be affected if she continued to live outside Canada. This prompted the mother to return to live with the landlord and family. Thereafter, the 2 Month Notice was issued to the tenant. In January 2023, the father died and the mother wants to live by herself in the rental unit to grieve, as she does not want to live around her family while grieving.

Additional evidence given at the hearing was that the tenant living in the upper rental unit was evicted by way of a 2 Month Notice issued near the end of 2021, and the upper tenant vacated in December 2021. The same reason was listed on that 2 Month Notice. SH submitted that the upper tenant was offered to move back into the upper rental unit in February 2022, when the father received the cancer diagnosis. The upper tenant declined as they had moved to other accommodations.

Further submissions by SH were as follows: The mother and father lived in the upper rental unit for a couple of months and since that time, renovations were done and then the upper rental unit has been used as an AirBnB. The mother prefers to live in the lower unit as they do not need as much space now. The upper rental unit has two bedrooms.

The landlord testified that they have not done anything wrong and as a good son is just trying to take care of their mother, who needs a place to stay.

Evidence filed by the landlord included airline flight information, text messages, Covid test results, a death certificate for the father, a Service Canada letter for the mother, hydro bills, multiple text messages between the landlord and tenant negotiating hydro bills owed by the tenant, and AirBnB listings.

Tenant's response –

The tenant testified to the following: She met with the tenant, "R", who lived in the upper unit, who told the tenant they lived in the lower unit for 4 years, prior to moving upstairs. The tenant stated that R said when contesting the 2 Month Notice given to them by the landlord, they received the same evidence the landlord submitted for this dispute, such as Covid test results and flight information. The tenant questioned why the elderly mother would want to live in a space that is accessed through outside steps and has the same number of bedrooms. The flight information provided by the landlord showed their parents requested wheelchair assistance through the airports. The landlord evicted R for the very same reason and their parents never lived in the upper rental unit. Within a few months of the eviction of R, there were renovations being done to the upper unit. There were lots of arguments with the landlord about what the tenant should be paying in hydro costs and the landlord told the tenant she had lots of complaints. The landlord was doing renovations in April and May and in June the rental unit was being used as an AirBnB.

Filed in evidence were multiple text messages between the landlord and tenant about what share of hydro the tenant should be paying, in at least one instance, the landlord requested a 100% of the hydro bills for the entire home.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Section 49 (3) of the Act states that 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.

When a tenant disputes a Two Month Notice to end tenancy, the landlord has the burden to prove that not only do they intend to use the rental unit for the stated purpose, but also that the Notice was given in good faith. This means the landlord has the burden to prove that there was an honest intention and an absence of bad faith.

Rule 6.6 provides that the *“standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed”*.

Tenancy Policy Guideline 2A (PG 2A) states that a landlord may end the tenancy if they or their close family member, landlord and spouse in this case, *“intend in good faith to use the rental unit as a living accommodation or as part of their living space”*.

PG 2A further provides 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 motive for ending the tenancy**, and they are not trying to avoid their obligations under the Act.

Upon review of the Two Month Notice to End Tenancy dated November 30, 2022, I find that Notice to be completed in accordance with the requirements of section 52 of the Act and I find that it was served upon the tenant in a manner that complies with section 88 of the Act.

In considering the totality of the evidence, I find on a balance of probabilities that the landlord had an ulterior motive in seeking to end the tenancy.

The landlord previously evicted the tenant in the upper unit the year before for the very same reason, and at the time the landlord issued the tenant the 2 Month Notice, the upper unit was still unoccupied, meaning the landlord’s mother could live in the upper unit as originally intended.

I also relied on the evidence that the true reason the landlord's mother returned to the country was to ensure that their benefits continued, rather than having an honest intention to move into the lower rental unit, especially when the upper unit was still available after evicting that tenant. I acknowledge that the landlord's father ultimately passed away in January 2023, however, the rental unit here has the same number of bedrooms as the upper rental unit and the Notice was issued in November, 2022.

I also gave great weight to the documentary evidence which I find to show an ongoing dispute between the tenant and the landlord as to what percentage of the hydro bill should be paid by the tenant. The landlord has requested the tenant pay varying percentages of the hydro bill, including 70%, 90% and up to 100%. I find this unreasonable when considering the landlord failed to include hydro costs as a part of the tenancy agreement. I also find this leads me to conclude the landlord had an ulterior motive in serving the tenant the 2 Month Notice, in order not to have to deal with the tenant in hydro disputes or her request for repairs.

For all these reasons, I find the landlord submitted insufficient evidence on a balance of probabilities to prove they issued the 2 Month Notice in good faith and without an ulterior motive.

As the landlord did not meet the good faith part of the two-part test, I find it was not necessary to consider whether the landlord's mother truly intended on living in the rental unit for residential purposes for 6 months following the effective date.

Therefore, I grant the tenant's application and I **ORDER** the 2 Month Notice of November 30, 2022, for an effective move-out date of January 31, 2023 is **cancelled** and is of no force or effect.

I **ORDER** the tenancy to continue until it may legally end under the Act.

As the tenant's application was successful, I grant the tenant recovery of the \$100 filing fee. I **authorize** the tenant a one-time rent reduction in the amount of **\$100** from a future month's rent in full satisfaction of the recovery of the cost of the filing fee. The tenant should inform the landlord when making this deduction so that the landlord has no grounds to serve a 10 Day Notice in that event.

Conclusion

The tenants' application has been granted as I have ordered the 2 Month Notice cancelled and is of no force or effect.

The tenancy will continue until ended in accordance with the Act.

The tenant is granted a 1-time rent reduction of \$100 to recover the cost of the filing fee.

The tenant is at liberty to reapply for the other issues listed in their application that were 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*. Pursuant to section 77(3) of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: April 12, 2023

Residential Tenancy Branch