



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Introduction

This hearing dealt with the tenant's application, amended application, and repeat application for dispute resolution seeking remedy under the *Residential Tenancy Act* (Act) for:

- an order cancelling the Two Month Notice to End Tenancy for Landlord's Use of Property (2 Month Notice) issued by the landlord
- an order cancelling a Two Month Notice to End Tenancy Because Tenant Does Not Qualify for Subsidized Rental Unit
- an order cancelling the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (10 Day Notice) issued by the landlord
- compensation for a monetary loss or other money owed
- to dispute a rent increase that is above the amount allowed by law
- an order suspending or setting conditions on the landlord's right to enter the rental unit
- an order requiring the landlord to comply with the Act, regulations, or tenancy agreement

The tenant, the landlord, and the landlord's witnesses were present for the start of the hearing and were affirmed. The witnesses were excused from the hearing and ultimately did not participate, by the landlord's choice.

The hearing process was explained, and they were given an opportunity to ask questions about the hearing process. The landlord confirmed receiving the tenant's evidence and first application. The landlord denied receiving the tenant's second application although the tenant provided evidence proving service by registered mail. I find ultimately that the hearing could proceed on both applications. I do not find it reasonable that the tenant would not properly serve the landlord with their application when disputing the 10 Day Notice. Apart from that, I found sufficient evidence that the

matter of cancellation or enforcement of the 10 Day Notice could be dealt with by the tenant's evidence.

The landlord filed evidence 2 days in advance of the hearing and the tenant denied receiving the evidence. As the evidence was not filed within the timelines of the Residential Tenancy Branch (RTB) Rules of Procedure (Rules), it is excluded.

Both 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 (Rules). However, not all details of the submissions are reproduced in this Decision. Words utilizing the singular shall also include the plural and vice versa where the context requires.

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Preliminary and Procedural Matters-

Rule 2.3 states that 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 these applications, the tenant listed multiple claims. I find the most urgent matters to consider are the tenant's request for cancellation of the 2 Month Notice and the 10 Day Notice. I find all additional claims on the application are insufficiently related to the primary issues. I will, therefore, only consider the tenant's request to cancel the Notices. As the tenant said they did not receive a Two Month Notice to End Tenancy Because Tenant Does Not Qualify for Subsidized Rental Unit, that claim was not considered.

The balance of the tenant's application is dismissed, with leave to re-apply, apart from the tenant's monetary claim of \$100,000, which I decline to hear as this amount was outside the jurisdiction of the RTB under the Act.

Further, I find that when the tenant filed to dispute the unsigned 2 Month Notice, although the landlord subsequently served another 2 Month Notice, I include in this dispute consideration of the two 2 Month Notices, and find that the tenant made their application within the required timelines.

Issue(s) to be Decided

Should the 10 Day Notice and 2 Month Notice be cancelled or enforced?

Background and Evidence

The evidence shows that the rental unit is a single room occupancy in the basement level of a home owned and occupied by the landlord on the other 2 floors. There are a total of 3 tenants renting rooms on the basement level. The tenancy began on December 1, 2021, and monthly rent is \$900.

The tenant filed copies of the 2 Month Notices, one was signed and one was not signed. The 2 Month Notices filed in evidence were dated May 24, 2023, for an effective move-out date of July 31, 2023. The reason listed on the Notice for ending the tenancy was that the rental unit will be occupied by the child of the landlord or landlord's spouse.

Pursuant to section 7.18 of the Rules, the landlord proceeded first in the hearing to give evidence to support the Notices.

10 Day Notice

The tenant submitted a copy of the 10 Day Notice, which was dated September 2, 2023, for an effective move-out date of September 13, 2023. Listed on the Notice was that the tenant has not paid rent of \$126 owed as of September 1, 2023. The landlord confirmed this was the amount over and above the usual monthly rent of \$900, as the tenant was given a notice of rent increase in November 2022.

The landlord confirmed that they could not find a copy of the notice of rent increase, but said it was in the amount of \$18 per month.

The tenant denied receiving a notice of rent increase and does not owe any outstanding rent.

2 Month Notice

The landlord testified as follows:

The reason they issued the 2 Month Notice was because their wife's son is to move into the home with their girlfriend in order to be close to the landlord's garage door business, the office for which is on the main floor. The landlord wants to retire soon and their stepson will take over the business. The stepson needs to be close to the business and they need their son to be in the house. The reason they want this particular rental unit is because it is bigger and has cabinets, which is necessary for 2 people. Another reason they chose this unit over the other two is because one tenant, PM, has seniority and has been there 4-5 years and the other unit has a tenancy that just began 3 months ago and has a 1 year lease.

The landlord then went on to testify that their stepson must move there was for 100's of reasons. Some reasons given were:

- the number of fans and other equipment constantly being used by the tenant, 24/7, and the excessive use of the heating, even in summer
- the tenant was told not to turn on the heater in the summer due to the extreme heat, but refused to comply
- their wife has to constantly clean the lower floor because the rental unit looks catastrophic and the tenant does not know how to clean
- the tenant has brought too many personal possessions into the rental unit, which was already fully furnished
- the tenant is smoking day and night
- the other tenants cannot take this tenant anymore

Tenant's response –

The tenant wrote in their application the following:

No reason was given by landlord after over 18 monts of renting and no other problems. Tenant has always maintained good releations and is quiet and works on the computer. Tenant stays in room and is respectful and considerate with other tenants and landlord's wife who often comes down to clean. Tenant feels targeted and discriminated against and landlord is hostile and angry without justification. Landlord doesn't know the law and is trying to operate a tenancy without accountability.

[Reproduced as written]

The tenant testified as follows:

The 2 Month Notice was part of the landlord's plot and collusion with PM. They are extremely clean and never heard of any of this before. The tenant denied smoking inside and there was never any mention of it by the landlord until these matters with their stepson moving in was brought up. They just sit in their room and work all day. All these issues were brought up by the landlord in the previous dispute resolution hearing on August 8, 2023.

The tenant submitted a copy of the Decision made in the previous dispute resolution hearing on August 8, 2023, which I have reviewed.

Analysis

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

10 Day Notice –

Under section 26 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement, whether or not the landlord complies with the Act, and is not permitted to withhold rent without the legal right to do so.

Pursuant to section 46(1) of the Act, when a tenant fails to pay rent when due, the landlord may serve the tenant with a 10 Day Notice for Unpaid Rent or Utilities. Upon receipt of the Notice, the tenant must pay the outstanding rent listed or file an application in dispute of the Notice within five (5) days.

When a tenant disputes a 10 Day Notice to end the tenancy, the landlord must provide sufficient evidence to support the Notice, and in this case, the evidence must show that the tenant owed an additional \$18 per month due to a rent increase imposed on the tenant. I find the landlord submitted insufficient evidence to support that they issued the tenant a notice of rent increase in the proper form as required by the Act and Residential Tenancy Regulations. Without this evidence, I am unconvinced that the rent was legally increased, especially in light of the tenant's denial of receiving one.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Due to the landlord's insufficient evidence to support that the tenant owed the amount of rent listed on the 10 Day Notice by way of an additional rent increase, I find this Notice is not valid.

I therefore **order** that the 10 Day Notice, dated September 2, 2023, cancelled, and of no force or effect.

2 Month Notice -

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, which means there is a 2-part test the landlord must meet in order to be successful with their 2 Month Notice.

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.

The landlord has the burden to prove that there was an honest intention and an absence of bad faith.

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.

I find when a landlord issues a 2 Month Notice, they must have only one reason for ending the tenancy, and that is the reason listed on the Notice. In this case, the landlord said they had 100's of reasons. The landlord then proceeded to list many of the reasons, such as the other two tenants cannot take the tenant anymore, the tenant uses too many appliances, and does not clean their unit. The tenant smokes all the time, and more.

The only evidence filed by the landlord were three photos, showing the tenant's unit and the common area cleaned by the landlord's wife.

While it may very well be true the landlord's stepson would move into the rental unit, I also find the evidence lead me to conclude the landlord did not issue the 2 Month Notice in good faith and had an ulterior motive when doing so, which was to evict the tenant because of the many issues they are having with the tenant as previously described, such as personal issues with other tenants, as described by the landlord.

Given the landlord's own affirmed testimony, I find that the 2 Month Notice was not issued in good faith, but rather I find the landlord had 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 son of the landlord or landlord's spouse truly intended on living in the rental unit for residential purposes for 6 months following the effective date.

I grant the tenant's application and I **ORDER** the 2 Month Notices dated May 24, 2023 **cancelled** and are of no force or effect.

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

Conclusion

The tenant's applications seeking cancellation of the 10 Day Notice and 2 Month Notices are granted as I have ordered the Notices cancelled and of no force or effect.

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

The remaining claims on the tenant's application have been dismissed, with leave to reapply, apart from the tenant's monetary claim of \$100,000, which is declined as I have no jurisdiction under the Act to decide this amount.

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: October 01, 2023

Residential Tenancy Branch