

DECISION

Dispute Codes CNL FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a notice to end tenancy for the landlord's use of property.

Service of the hearing documents, by the tenant to the landlord, was done in accordance with section 89 of the *Act*, delivered in person on March 16, 2009.

Both the landlord and tenant appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, in documentary form, and to cross exam each other.

All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

The issues to be decided based on the testimony and the evidence are:

- Whether the tenant is entitled to an Order to cancel a Notice to End Tenancy for Landlord's use pursuant to Section 49(8) of the *Residential Tenancy Act*
- Whether the tenant is entitled to a Monetary Order under section 67 of the *Act* to recover the filing fee

Background and Evidence

The tenancy began on September 1, 2007, is a month to month tenancy with rent of \$1,325.00 payable on the first of each month. The tenant paid a security deposit of \$500.00 on September 1, 2007. This tenancy applies to the renting of a barn which has 8 horse stalls, is approximately 30' x 50' in size, plus a 1 bedroom suite, which is

attached to the barn. The suite is entered from inside the barn and is approximately 300 square feet in size.

The tenant owns two horses and runs a business housing 4 additional horses in the rental barn.

The landlord testified that he issued a 2 month Notice to End Tenancy for landlord's use, and personally served the notice to the tenant on February 28, 2009 at approximately 11:00 a.m.

The landlord testified that he and his 66 year old father run a blueberry farming business and have two barns that have suites which they rent out to tenants. The landlord advised that they have owned the farm since early June 2006 and have been purchasing additional equipment as they expand their business. They purchased a new tractor last year and want to start storing most of their tractors and farm equipment indoors to prevent neighbours from borrowing the equipment, and to prevent the equipment from rusting.

The landlord stated that they started measuring different areas of their property in September 2008 in consideration of building a new storage barn for the farm equipment. They first looked at an area near the barn which the tenant is currently renting, and then they decided to look at an area closer to their house. They staked out an area up by the house and got a couple of verbal quotes as to the cost to build the structure. The landlord testified that they were quoted between \$60,000.00 and \$80,000.00 as a cost to build the new storage barn.

The landlord stated that he had a conversation with his father, just prior to his father leaving the country earlier this year, in which they decided that the business could not afford to pay upwards of \$60,000.00 to build the new structure, plus the additional taxes and fees involved after the structure was up, so they decided not to proceed with

building a new structure and made the decision to utilize the existing lower barn to store their farm equipment, which involved giving the tenant the notice to end tenancy.

The tenant testified that she feels the landlord is evicting her so he can re-rent the barn and suite for a higher price.

The tenant stated that the landlord has ample space in other storage facilities, already on his property, to store the landlord's tractors and farm equipment, so he does not need to evict her. The tenant testified that there is a workshop and shaving shed that could house the farm equipment.

The tenant contends that the barn she currently occupies is not large enough to house the farm equipment, that the overhead barn doors are not tall enough for the tractors, and that there is not enough space for the tractors to enter the barn, that there is a cement structure that houses the manure bin and the paddocks which would block the access into the barn.

The tenant testified that she had a disagreement with the landlord approximately two weeks prior to receiving the 2 month Notice to End Tenancy. She stated that the landlord paid \$20.00 for equipment to fix a stall, and that when she refused to pay the landlord the \$20.00 they argued for a bit and then the landlord walked away mumbling under his breath. She stated that the landlord told a previous tenant that he was going to evict her.

The previous tenant was contacted to testify as a witness for the tenant; however the previous tenant declined to provide testimony at the hearing.

The landlord responded by saying he did not issue the Notice to End Tenancy over a \$20.00 repair bill. He stated he would not disregard a rental income of \$1,325.00 per month to settle a dispute over \$20.00.

The landlord testified that the other properties that the tenant suggested he use to store the equipment are much smaller than the lower barn with the work shop measuring approximately 13' x 20' and the shaving shed 12' x 15'. The landlord advised that he currently leases out the shaving shed, and the work shop is utilized when they need to repair the farm equipment.

The landlord stated that they plan to remove the horse stalls from the barn, giving them more room to store the equipment and there is ample room to turn the tractors around at the end of the blueberry rows to gain access into the barn.

The landlord stated that once they move the equipment into the barn, then the suite can no longer be occupied as a residence because the tractors emit fumes when they start up, so it would be a health hazard to have anyone living in the suite. The landlord stated that they intend to use the suite as a lunch room for the seasonal farm workers. The tractors would be out in the fields during the day when the farm workers are working so the suite would provide a sheltered lunch and break area with the required washroom facilities.

The landlord questioned the May 31, 2009 end of tenancy date which was referred to during the hearing and asked if it should not be April 30, 2009.

Analysis

The tenant has applied to cancel a notice to end tenancy pursuant to the *Residential Tenancy Act* and the landlord has requested an Order of Possession be issued based on the 2 Month Notice to End Tenancy that was served on the tenant on February 28, 2009.

Based on the documentary evidence and verbal testimony by both parties, the landlord has been working on creating a storage facility to house his tractors and other farming equipment since the fall of 2008.

In this case the landlord must provide evidence to prove the “good faith” requirement for the reasons given on the Notice to End Tenancy by first truly intending to use the premises for the purposes stated, in this case to utilize the lower barn as a storage facility for farm equipment, use the attached suite as a lunch and break room for the seasonal farm works, and secondly the landlord must not have a dishonest or ulterior motive as the primary motive for seeking to have the tenant vacate the residential premises.

In consideration of the evidence before me, and in the context of the weight of the tenant’s evidence against the landlord’s evidence, I must consider that hearsay evidence, if relevant evidence is admissible but because an opposing party cannot challenge the evidence by cross-examination, less weight will be given to it than to direct evidence.

On the balance of probabilities, I accept the testimony provided by the landlord as being consistent with his looking for the most economical way to store his farming equipment and I find that these reasons meet the test of the “good faith” requirement to issue a 2 Month Notice to End the tenancy.

The landlord had questioned the tenancy end date of May 31, 2009 referred to during the hearing, and it was pointed out that this was the date which he listed on the 2 month notice as the date that the tenant was required to move out of the rental unit and is the date that the Order of Possession will be issued for.

As the tenant was not successful in her application to cancel the Notice to End Tenancy, I cannot find in favour of her request to recover the filing fee.

Conclusion

I HEREBY FIND that the landlord is entitled to an Order of Possession effective **May 31, 2009**. This order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that Court.

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*.

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Dated: April 17, 2009.

Dispute Resolution Officer