



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes RP, CNL, OPT, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to cancel a Two Month Notice to End Tenancy ("the Notice") issued by the Landlord and for an order requiring the Landlord to make repairs to the rental unit, or obtain an Order of Possession and to recover the filing fee.

Both the parties and the Landlord's witness appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, in documentary form, and to cross examine each other.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence timely received and relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Has the Landlord established that the Landlord, or a close family member of the Landlord, intends in good faith to occupy the rental unit?

Is the Tenant entitled to the further relief sought in his Application?

Background and Evidence

The subject of this dispute is the *2 Month Notice to End Tenancy for Landlord's Use of Property* (the "Notice") issued September 30, 2010 and requiring the tenant to vacate the rental unit by November 30, 2010. The reason indicated on the Notice is that the rental unit will be occupied by the landlord, the landlord's spouse, or close family member of the landlord or landlord's spouse. I note the box marked by the Landlord also contained his handwritten word "renovations."

There was disputed testimony as to the date of delivery of the 2 Month Notice to End Tenancy, but I accept that the Notice was delivered to the Tenant on October 5, 2010.

Pursuant to the rules of procedure for the Act, the Landlord proceeded first in the hearing and testified as to why the Tenant had been served with the 2 Month Notice to End Tenancy for Landlord's Use of Property. I heard undisputed testimony that there is

no written tenancy agreement, that the tenancy started April 15, 2001, that the rent started at \$500.00 per month, is currently \$650.00 per month and the Tenant paid a security deposit of \$250.00 on April 15, 2001. The parties could not agree on any other relevant term in the oral agreement.

The Landlord testified that the rental unit was a portion of the basement suite, including a living room, bedroom, bathroom and kitchen and that the rent did not include utilities, but rather the Tenant was to pay 1/3 and the upper tenants to pay 2/3 of the utility bills. He further testified that rent was increased from \$500.00 to \$650.00 per month in 2008, with no underlying reason.

The Landlord testified that he issued the Notice as his adult daughter had become engaged and that she wanted to live in the rental unit. Further, the Landlord stated that he required the use and possession of the rental unit to renovate so that both the upper and lower portions of the premises had access to the laundry prior to re-renting one of them.

The Landlord testified that he did not know that the Tenant had taken down the door leading to the laundry and had taken over the spare bedroom and that he did so without his permission.

The Landlord's daughter testified that she became engaged, wanted to move into the premises, and when queried, stated she was pretty sure she would be moving into the lower suite.

The Tenant testified that the rent was to include utilities, that the rent was increased in 2008, which included maintenance, for a larger portion of the lower unit, which included a spare bedroom and laundry access, and that the parties had discussed as early as 2003 about getting the extra space. The Tenant testified that the increased rent also was for an allowance of a dog.

The Tenant testified when the upper suite became vacant, he was informed by the Landlord he had to pay the hydro and gas bill while the upper suite was vacant. This was confirmed by the evidence submitted by the Landlord, which was a letter sent by him to the Tenant. This letter further stated that he, the Landlord, issued a handwritten 2 Month Notice to the purpose of renovating the suite.

The Tenant testified that he was without hot water for the month of September and that when the upper suite tenants moved out, he had to pay the unpaid utility bills, start up costs and past due amounts. The Tenant testified he paid \$528.55 for Terasen Gas and \$173.01 for hydro.

The Tenant further testified that the Terasen technician refused to light the furnace as it needed a service.

Analysis

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

2 Month Notice to End Tenancy

Once the Tenant made an Application to dispute the Notice alleging it has been given in bad faith, the Landlord became responsible to prove the Notice to End Tenancy is valid.

The Notice was issued pursuant to section 49(3) which provides “a landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or close family member of the landlord intends in good faith to occupy the rental unit”.

Guidance for the interpretation of this section of the *Act* comes from other decisions, case law and the policy guideline.

The relevant Policy Guideline is section 2, and states, in part:

The "good faith" requirement imposes a two part test. **First**, the landlord must truly intend to use the premises for the purposes stated on the notice to end the tenancy. **Second**, the landlord must not have a dishonest or ulterior motive as the primary motive for seeking to have the tenant vacate the residential premises.

For example, the landlord may intend to renovate or repair the rental unit as stated on the notice to end. That intention may, however, be motivated by dishonest or undisclosed purposes. If the primary motive for the landlord ending the tenancy is to retaliate against the tenant, then the landlord does not have a “good faith” intent. Rather, the circumstances may be such that dishonesty may be inferred.

If the “good faith” intent of the landlord is called into question, the burden is on the landlord to establish that he/she truly intends to do what the landlord indicates on the Notice to End, and that he/she is not acting dishonestly or with an ulterior motive for ending the tenancy as the landlord's primary motive.

The Tenant in this case called into question the Landlord’s good faith intention and I find the Landlord has the burden to demonstrate that he truly intends to do what the Landlord indicates on the Notice and that the Landlord is not acting dishonestly or with an ulterior motive for ending the tenancy.

Establishing the burden of proof is essential in this case because I was provided with mostly disputed verbal testimony with respect to the Landlord’s intent to use the property. 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 position.

In this case, I found there was a lack of documentation or testimony to confirm or prove the Landlord's stated use. The Landlord's daughter, who was supposed to move into the rental unit, was not specific as to which suite she was to move into. I did not find her testimony credible.

I also found, based on the balance of probabilities, that it is unlikely the Landlord required the rental unit for his daughter when his written letter to the Tenant mentioned he needed to end the tenancy for renovation.

I find the Landlord may be primarily motivated to end the tenancy due to not wanting this Tenant in the rental unit in order to increase the amount of rent being collected for this unit and because of previous disputes with the Tenant.

In light of the above, I find the Landlord failed to satisfy me that the daughter intends in good faith to move in to the rental unit. Therefore, I **set aside and cancel** the Notice to End Tenancy dated September 30, 2010 with the effect that this tenancy continues.

Request the Landlord to make repairs and allow the Tenant a rent reduction

A "**tenancy agreement**" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

In the case of verbal agreements, I find that when verbal terms are clear and when both the Landlord and Tenant fully agree on the interpretation, there is no reason why such terms can't be enforced. However, when the parties are in dispute about what was agreed-upon, then verbal terms by their nature are virtually impossible for a third party to interpret for the purpose of resolving a dispute that has arisen.

The testimony supports that the terms of the tenancy agreement are that the Tenant's monthly rent is \$650.00, having initially started at \$500.00 and increased to the higher amount in April 2008. Further I find that on a balance of probabilities, that in addition to the monthly rent, the Tenant was to arrange with the upper tenants to pay 1/3 of the utility bills, which were in the upper tenants' names.

On the subject of whether or not terms of a tenancy agreement can be enforced, Section 6(3)(c) of the Act states that a term of a tenancy agreement is not enforceable if the term is not expressed in a manner that clearly communicates the rights and obligations under it. In this case I find the verbal terms of the tenancy agreement to be unclear, as explained by the Landlord. I also find the Landlord's expectation that a Tenant to be responsible for splitting the cost of hydro and natural gas consumed in a

separate self contained suite with other tenants of the premises to be an unconscionable term.

Having found the above, that the terms relating to payment of utilities are unconscionable and unenforceable, **I HEREBY ORDER** the hydro and natural gas account to be switched into the Landlord's name no later than November 22, 2010. The Tenant is at liberty to provide a copy of this Decision to the hydro and natural gas companies to ensure the utilities are put in the property owner's name in accordance with my Orders.

I find on a balance of probabilities that the Tenant and the Landlord in 2008 agreed that the rent would be increased from \$500.00 to \$650.00 per month in return for the Tenant's increased portion of the rental unit, which I find now includes the remaining rooms in the lower suite and laundry access.

I further find that the Landlord is **required**, as soon as he starts being billed, to issue the Tenant a written request for payment of a proportionate share (according to the number of occupants) of the hydro and natural gas bills when the upper suite is occupied. The Landlord must attach a copy of the bills, verifying the number of occupants to support the amounts the Tenant is required to pay.

The Landlord is also **ORDERED** to prorate any portion of a month as necessary to account for any portion of a month when a rental unit is unoccupied. I find that that when the upper unit is unoccupied, the Tenant is **required** to pay 50% of the utility bills, which would take into account the continued use of power necessary for the upper unit, such as refrigerator, lights and any renovations.

The Tenant is **HEREBY ORDERED** to pay his portion of the bills within 10 days of receiving the Landlord's written request and copies of the utility bills for the remainder of the tenancy.

I find the through the Landlord actions and deeds that the Tenant is allowed to have one dog in his rental unit.

Under authority of Section 62 (3) of the Act, I direct the Landlord and Tenant enter into a written tenancy agreement pursuant to these terms and **I Order the tenancy agreement comply with the Act as set forth in Section 13.**

The Landlord may not increase the rent except as allowed under the Act in Section 42.

Section 32 of the Act provides that a Landlord must provide and maintain the rental unit in a state of decoration and repair that complies with health, safety and housing standards required by law.

The evidence and testimony supports that the furnace needs to be serviced and **I HEREBY ORDER** the Landlord to have the furnace serviced by a trained technician by November 22, 2010.

I find the Landlord has been acting unconscionably in requiring the Tenant to arrange with the upper Tenants to pay the premises' utility bills, that the Tenant has had to pay more than his share to keep and maintain the bills and that the Tenant was without hot water for the month of September 2010. Therefore I find that the Tenant has established a total monetary claim for rent reduction of **\$751.56**, comprised of **\$528.55** for Terasen Gas paid in June, **\$173.01** for hydro paid in June, and the **\$50.00** fee paid by the Tenant for this application.

Under section 67 of the Act, I **direct** the Tenant satisfy the monetary claim of **\$751.56**, by withholding rent of \$650.00 for December 2010, and \$101.56 in January 2011.

Conclusion

The Notice to End Tenancy has been cancelled and the tenancy continues.

The Tenant is granted a monetary claim in the amount of **\$751.56**, including the filing fee for this proceeding and is directed to withhold this amount from upcoming payments of rent.

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 17, 2010.

Dispute Resolution Officer