



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNC OLC FF

Preliminary Issues

Upon review of the Tenant's application for dispute resolution it was noted that the Tenant provided evidence that she was disputing the 1 Month Notice Issued for Cause and the 2 Month Notice Issued for Landlord's Use of the Property. The Tenant requested that her application be amended to include her request to dispute the 2 Month Notice issued for Landlord's use.

The Landlord testified that he was here today to discuss both the 1 Month and the 2 Month Notices and was in agreement to amending the Tenant's application.

Based on the aforementioned I approve the Tenant's request to amend her application to include the request to cancel the 2 Month Notice to End Tenancy for Landlord's use of the property, pursuant to the *Residential Tenancy Policy Guideline # 11*.

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to cancel a notice to end tenancy for cause, to cancel a notice to end tenancy for landlord's use of property, to Order the Landlord to comply with the Act, and to recover the cost of the filing fee from the Landlord for this application.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the *Act*, sent via registered mail on December 9, 2010. Mail receipt numbers were provided in the Tenant's evidence. The Landlord confirmed receipt of the hearing documents and the Landlord's evidence.

The Landlord and Tenant appeared at the teleconference hearing, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form. The Landlord testified that he did not submit documentary evidence in response to the Tenant's application.

Issue(s) to be Decided

1. Has the Tenant breached the Act, regulation or tenancy agreement?
2. If so, has the Landlord proven entitlement to end the tenancy with a 1 Month Notice to End Tenancy for Cause as a result of that breach?
3. Has the Landlord proven the good faith requirement in issuing the 2 Month Notice to End Tenancy for Landlord's use of the property?

Background and Evidence

I heard undisputed testimony that the Tenant and her male partner entered into a tenancy agreement with the previous owner December 1, 2005. The current Landlord purchased the property and entered into a written month to month tenancy agreement with the Tenant and her male partner shortly after the title transferred into the Landlord's name in the spring of 2007. The Tenant informed the Landlord that her male partner moved out of the rental unit December 1, 2009. The current rent is payable on the first of each month in the amount of \$900.00 and \$450.00 was paid December 1, 2005 by the Tenant for the security deposit.

The Landlord testified that he provided the Tenant with verbal notice to end the tenancy and after she informed him that she was going to dispute the notice he issued the Tenant a 1 Month Notice and a 2 Month Notice to end the tenancy and posted both notices to the Tenant's door on December 2, 2010.

The Landlord advised the primary reason for issuing the 1 Month Notice to End Tenancy is because the Tenant has roommates which confirms she has illegally sublet the rental unit without his permission. He stated that he first found out about the other occupants about three weeks ago when he had to bring his insurance agent through for an inspection and when he attended the unit he was greeted by one of the occupants.

Other reasons for issuing the 1 Month Notice includes a series of bounced cheques and damage to the bay window that remains unrepaired. He stated that over the course of the tenancy there were a series of bounced cheques; however he was not able to provide testimony pertaining to these incidents as he was calling from a "remote" location and he did not bring his file with him. He stated that the bay window was damaged by the Tenant sometime ago and he requested that she have it repaired over eight months ago however it remains damaged to this day. The Landlord confirmed that

his communications with the Tenant prior to issuing the two notices to end tenancy were always verbal and he has never issued the Tenant any written notices or warnings.

The Tenant responded by confirming both her and her ex-partner were listed on the tenancy agreement and the Landlord made no effort to change the tenancy agreement after being told that her ex-partner had moved out. She states she informed the Landlord, around the time her partner moved out, that she would be getting a roommate(s) and she acknowledges that she did not inform the Landlord when either occupant moved into the unit. One roommate moved in December 1, 2009 and the other moved in October 1, 2010. She states she has not sublet the unit and was never told by the Landlord that she could not have roommates. Her roommates pay her for their share of the rent and she pays the full rent to the Landlord with her personal cheques.

With respect to the damaged window she argues that she informed the Landlord as soon as the window was damaged and told him she would look after getting it repaired. She has made several attempts to have contractors come and provide her with a quote for the repair, however either they never show up at the planned time or her school and work schedule does not provide an opportunity to meet with them. A few months ago the Landlord told her that he would look after getting someone in to complete the repairs and that was the last she heard of it.

The Tenant states she has never paid her rent late so if there were bounced rent cheques it would have had to have occurred when her male partner was paying the rent as none of her rent cheques have bounced.

Upon reviewing the 2 Month Notice to End Tenancy for Landlord's Use of the property the Landlord testified that he has sold his primary residence and title is scheduled to transfer January 31, 2011. His family must be moved out by that date. He made an offer to purchase another house which has fallen through. His family will be without a residence as of January 1, 2011 so he needs to evict the Tenant as soon as possible so he can conduct some minor renovations to the rental house prior to moving himself and his family in. He has made arrangements to stay a few weeks at a friend's guest house but that is only for a few weeks. He clarified that no permits are required to conduct the renovations he will be doing such as painting and replacing carpets and he stated that he misunderstood what that section of the 2 Month Notice was referring too. He was

adamant that he needs the rental house for himself and his family to live in until they can find another larger home to purchase.

The Tenant stated that the Landlord informed her that he had sold his property and that he would need to occupy the rental unit. She does not want to have to move during the winter and is willing to occupy the rental house while the Landlord completes the renovations.

A discussion followed where the parties began a discussion towards a settlement agreement. The discussion broke down and the Landlord stated that he was being called away to attend to an urgent matter and he was no longer willing to discuss a settlement agreement. He stated "I need this house by January 31, 2011 to move my family in so I will be pursuing another 1 Month Notice".

The Tenant stated that she had no further testimony to provide and the hearing was concluded.

Analysis

1 Month Notice to End Tenancy for Cause

In this instance, the burden of proof is on the Landlord to prove the reasons for issuing the 1 Month Notice to End Tenancy for Cause as follows:

- A) Tenant is repeatedly late paying rent - The Landlord was not able to provide testimony as to when or how many rent payments were late. The Tenant provided opposing testimony stating that none of her cheques were ever returned NSF. Therefore I find the Landlord provided insufficient evidence to support this reason for issuing the 1 Month Notice.
- B) Tenant has allowed an unreasonable number of occupants in the unit/site – Neither party provided a copy of the tenancy agreement into evidence, therefore there is insufficient evidence to support that the tenancy agreement limits the number of occupants in the unit or requires prior permission to acquire additional occupants. There is however evidence that one tenant no longer occupies the unit while two additional occupants reside in the unit with the Tenant. Based on the aforementioned there is insufficient proof that the Tenant has breached the Act, regulation or tenancy agreement and therefore the 1 Month Notice must fail on this ground.

- C) Tenant has engaged in illegal activity that has or is likely to damage the landlord's property - The evidence supports there was damage caused to the property however it also supports the Tenant has accepted responsibility for the damage and has made efforts to have it repaired up until the time the Landlord stated he would look after getting the damage repaired. The evidence also supports there have been no written requests issued by the Landlord to have the damage repaired within a set timeframe. Therefore there is insufficient evidence to support ending the tenancy on this ground.
- D) Tenant has assigned or sublet the rental unit/site without landlord's written permission - I do not accept the Landlord's testimony that the Tenant has "illegally sublet the unit". A sublet or sublease is a lease given by the tenant or lessee of residential premises to a third person where the Tenant no longer occupies the rental property. A sublease or sublet must be for a period of time that is less than the Tenant's original lease period otherwise it is considered an assignment.

In this case I find that the evidence supports that the Tenant has entered into a verbal tenancy agreement with the other two females (her roommates) making her their landlord and them her tenants. This means these two additional females are occupants to the Landlord named in this dispute. The *Residential Tenancy Act* does not govern occupants.

In the absence of a copy of the tenancy agreement I find there is insufficient evidence to support the existence of a material term which speaks to conditions pertaining to occupants of the unit. Therefore I find the Landlord has failed to provide sufficient evidence to support this ground for issuing the Notice.

As per the above, I have dismissed all of the grounds indicated by the Landlord for issuing the 1 Month Notice to End Tenancy. Therefore the 1 Month Notice to End Tenancy issued December 1, 2010, is hereby cancelled and is of no force or effect.

2 Month Notice to End Tenancy for Landlord's Use

Section 53 of the Act provides that where a notice is issued with an incorrect effective date, the notice is automatically corrected to the earliest date permitted which complies with the Act. In this case the 2 Month Notice was issued December 2, 2010, therefore the effective date is February 28, 2011.

When a Tenant has filed to cancel a notice to end tenancy for landlord's use it calls into question the "good faith" requirement. The onus lies on the Landlord to prove the two part test as follows:

- 1) The landlord must truly intend to use the premises for the purposes stated on the notice to end tenancy; and
- 2) The landlord must not have an ulterior motive as the primary motive for seeking to have the tenant vacate the rental unit.

The Landlord submitted testimony that his primary residence has been sold and the offer he had to purchase a new home fell through. I accept his testimony that he needs to vacate his residence by January 31, 2011 which requires him to find a residence for himself and his family to occupy until such time that he can purchase a new home. The Tenant confirmed the Landlord had told her that he had sold his home and would need to occupy the unit. The Landlord has made arrangements for temporary accommodation so that he may conduct some minor renovations on the rental property before they occupy it.

After careful consideration of the evidence and testimony before me I find the Landlord has proven the good faith requirement. Therefore the 2 Month Notice to End Tenancy is upheld and the Tenant must vacate the unit by February 28, 2011.

NOTE: The Tenant is now required to provide her tenants (the roommates) with notice to end their tenancy as she will no longer have a right to occupy the unit after the effective date of the 2 Month Notice (February 28, 2011).

Throughout the hearing the Landlord displayed a sense of urgency of getting the Tenant and the two occupants out of the rental unit as soon as possible, so that he may conduct his renovations and move his family in. I caution the Landlord that if he serves additional notices to end tenancy, the Tenant will be at liberty to make further applications for dispute resolution to cancel such notices. If the notices are determined to be unfounded, then the Landlord's actions of issuing additional notices may be considered a breach of the Tenant's right to quiet enjoyment and the Tenant would be at liberty to apply for monetary compensation.

Pursuant to section 62 of the Act, I hereby Order the Landlord to comply with the *Residential Tenancy Act*, regulation, and tenancy agreement.



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The Tenant has been partially successful, therefore I award recovery of the \$50.00 filing fee.

Conclusion

The 2 Month Notice to End Tenancy is hereby upheld. The Tenant must vacate the rental unit, in accordance with this notice, no later than **February 28, 2011 at 1:00 p.m.**

The Landlord is hereby Ordered to comply with the *Residential Tenancy Act*, regulation, and tenancy agreement.

The Tenant may deduct the onetime \$50.00 award from her future rent payment.

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: December 30, 2010.

Residential Tenancy Branch