

DECISION

Dispute Codes CNC, CNL

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47; and
- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matters

The parties agreed that a number of handwritten notices to end this tenancy, including a 1 Month Notice, were issued by the landlord prior to September 1, 2011. The parties agreed that these notices were invalid because they were not issued on the appropriate Residential Tenancy Branch (RTB) forms. As such, the landlord was not seeking an end to this tenancy or an Order of Possession on the basis of his handwritten notices. I advised the parties that I was allowing the tenants' application to cancel the landlord's 1 Month Notice.

The male tenant (the tenant) confirmed that the landlord handed his co-habitant, the other tenant in this application, the 2 Month Notice on September 1, 2011. The landlord's son who acted as the landlord's agent and translator in this hearing, confirmed that the tenant handed a copy of his dispute resolution hearing package to the landlord's caretaker on September 16, 2011. I am satisfied that the parties served these documents to one another in accordance with the *Act*. I am also satisfied that the tenant served a copy of his written evidence to the landlord. The landlord supplied no written evidence.

At the hearing, the landlord's agent requested an end to this tenancy and an Order of Possession if the tenants' application to cancel the 2 Month Notice were dismissed.

The landlord's 2 Month Notice, entered into written evidence by the tenants, identified the following reasons for seeking an end to this tenancy:

- *The landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant...*

- *The landlord intends to convert the rental unit for use by a caretaker, manager or superintendent of the residential property...*

The landlord's agent testified that the landlord has not obtained any necessary permits or approvals required to repair the rental unit in a manner that requires the tenants' removal from the rental unit. As such, I advised the parties at the hearing that I found that the first of the two reasons cited by the landlord for ending this tenancy was inadequate to obtain an end to this tenancy. The sole remaining ground for ending this tenancy was whether the landlord intends to convert the rental unit for use by a caretaker.

Issues(s) to be Decided

Should the tenants' application to cancel the landlord's 2 Month Notice be allowed? If not, is the landlord entitled to an Order of Possession? Are the tenants entitled to recover their filing fee for their application from the landlord?

Background and Evidence

This month-to-month tenancy for an acreage rental property commenced by way of an oral agreement with the previous owner of this property on or about March 1, 2008. No written tenancy agreement exists. Monthly rent is set at \$800.00, payable in advance on the first of each month. No security deposit was paid.

The landlord lives in another structure on this rural property. Both the landlord and tenants keep livestock on the property.

The landlord's agent testified that his father, the landlord, is elderly and can no longer look after this farm property located in the Agricultural Land Reserve. He testified that his father has had seven heart attacks and nine strokes. He said that his father's reason for purchasing the property was to return the property to a functioning farm. To do so, the landlord's agent testified that he and his father had attended the BC Assessment Offices recently to seek a return of the property to farm status for assessment purposes. He said that the BC Assessment officials told him that if they completed the necessary forms which would be submitted this week, the property would be assessed as a farm next year.

The landlord's agent also said that he and his father are in the process of increasing the livestock and other farming operations on the property. He said that at present, his father has six sheep, six goats and 40 chickens on the property. He testified that they plan to add two dozen sheep, one dozen goats and 200 chickens to the livestock operation on the property. The landlord's agent said that he has started building a chicken coop on the property and will need to perform additional repairs and

renovations to house the additional livestock. He also said that the landlord has plans to start a small orchard, build greenhouses and place wind turbines on the property.

Since the landlord is now planning to make more intensive use of the property for farming purposes, the landlord and his agent testified that they need to house the caretaker who will be looking after this operation in the housing unit presently used by the tenants. Until now, the caretaker, a person he identified as a close family member, although not a blood relative, has been staying with the landlord when he comes to the property from Alberta. The landlord's agent said that the current plan is to have this individual live in the rental unit, likely with another hired caretaker who has not yet been retained. Although he identified this individual by name, this person did not participate in the hearing nor did the landlord produce any written evidence confirming that this person would be living in the rental unit as a caretaker for the property.

The tenant entered oral and written evidence questioning whether the landlord was acting in good faith with his stated plan to require a caretaker unit for this property. He entered undisputed written evidence that on July 4, 2011, the landlord requested an increase in monthly rent from \$800.00 to \$1,200.00 effective August 1, 2011. The tenants had refused to agree to this 50% increase in their rent, noting that an annual rent increase was limited to "around 4%" under the *Regulation* and the *Act*.

The tenant entered undisputed evidence that shortly after refusing to pay additional rent the landlord commenced sending a series of handwritten notices to end tenancy, none of which were in accordance with the *Act*. The tenant also noted that the one Notice to End Tenancy that the landlord had served on the proper RTB form included two reasons. He observed that the landlord's agent had admitted that the landlord had no permits or approvals in place whereby repairs could be initiated or were required to end this tenancy. The tenant maintained that the email evidence submitted and the landlord's history of trying to end this tenancy demonstrated that he was acting contrary to the good faith requirement set out in the *Act*. He said that the landlord has not shown that he needs the rental unit to conduct repairs to the property to house more livestock or that he requires the rental unit for a resident caretaker.

Analysis

Section 49(6)(e) of the *Act* allows a landlord to end a tenancy "in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to...convert the rental unit for use by a caretaker, manager or superintendent of the residential property."

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.

If the "good faith" intent of the landlord is called into question, the burden is on the landlord to establish that he truly intends to do what he has indicated on the Notice, and that he is not acting dishonestly or with an ulterior motive as his primary motive.

The tenant brought into question the landlord's motive for seeking to have the tenants vacate the residential tenancy. The tenant claimed that the landlord was seeking an end to this tenancy because the tenants refused to agree to a 50% increase in rent.

I have considered the oral testimony provided by the landlord and his agent and the tenant's oral and written evidence expressing concerns about the extent to which the landlord's Notice was issued in good faith. The timing of the landlord's failed attempt to increase the tenant's rent, and the subsequent repeated attempts to end this tenancy on the basis of handwritten notices to end this tenancy suggest that there is merit in the tenant's assertion that the landlord may not be acting in good faith. Under such circumstances, I find that the specifics of the landlord's plans requiring the rental unit for a caretaker of the residential property requires careful scrutiny.

In this case, the landlord and his agent provided relatively vague details as to the plans to increase the size of the farming operation on this property. The landlord provided no receipts for the purchase of additional livestock, although the landlord's agent said that they were calling from a livestock auction facility during the hearing. The landlord provided no written statement from the caretaker who has been travelling to and from Alberta to look after this farm operation. The caretaker did not participate as a witness at this hearing. The landlord provided no information regarding the search for an additional live-in caretaker who would be required to live in the present rental unit. Other than the landlord's agent's statements as to plans and purchases he and his father expect to undertake over the coming weeks and months, the landlord provided little firm evidence of the landlord's intention to increase the scope of his farming operation. I find that these deficiencies in the landlord's evidence combined with the written evidence supplied by the tenant raise significant enough questions regarding the landlord's motivations to cancel the landlord's Notice.

In coming to this decision, I also note that the effect of removing the tenants from their rental unit would be to convert this property to a farm operation. In that event, the rental

unit would be needed for a farm operation, a non-residential use, and not “for use by a caretaker... **of** the residential property” (emphasis added).

At present, the landlord has not met the burden of proof required to demonstrate his good faith commitment to undertake the changes requiring an end to this tenancy for use by a caretaker of the residential property. In coming to this determination, I recognize that the landlord may at some point in the future be in a better position to demonstrate his genuine commitment to change the way that he uses this property.

Since the tenants have been successful, I allow them to recover their \$50.00 filing fee for their application from the landlord. To implement this decision, I allow the tenants to reduce their next monthly rental payment by \$50.00.

Conclusion

I allow the tenant’s application to cancel the landlord’s September 1, 2011 Notice to End Tenancy. I also find that any handwritten notices to end tenancy issued by the landlord are of no effect. As the landlord’s notices to end tenancy are cancelled, this tenancy continues.

I find that the tenants are entitled to a monetary award of \$50.00 to recover their filing fees for their application. I order the tenants to reduce their next scheduled monthly rent payment by \$50.00 to recover this monetary award.

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*.