



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, CNC, MNDC, OLC, ERP, RP, LRE, O

Introduction

The tenant filed three separate Applications for Dispute Resolution against the landlord. Face-to-face hearings were scheduled for September 29, 2011; September 30, 2011 and October 5, 2011. Both parties appeared at the September 29, 2011 hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and procedural matters

At the commencement of the hearing, I informed the parties of the hearing process including instructions as to appropriate conduct at the hearing. Both parties were instructed not to interrupt, disturb or otherwise antagonize the other party. As a matter of record, during the hearing, I had to caution the tenant about making antagonistic comments towards the landlord. Further, at the end of the hearing, the tenant stated to the landlord "you're dead meat". The in-person hearing was ended after that comment.

The landlord requested the tenant's three applications be joined and heard together. Upon review of all three applications, I determined that the matters involved the same parties, the same property, and that I would make similar findings of law in resolving each of the applications. Therefore, I ordered that the applications be joined and I would hear the three applications on September 29, 2011.

The landlord requested that the tenant's applications be dismissed on the basis the applications were frivolous or an abuse of the dispute resolution process. As the tenant had filed to dispute Notices to End Tenancy I informed the parties I would proceed to hear the applications.

In reviewing the tenant's applications with the parties, I determined that the landlord had not served the tenant with a 1 Month Notice to End Tenancy for Cause. Accordingly,

the tenant's request to cancel such a notice was unnecessary and I do not address a 1 Month Notice to End Tenancy for Cause in the remainder of this decision.

Issue(s) to be Decided

1. Should the 2 Month Notice to End Tenancy for Landlord's Use of Property be upheld or cancelled?
2. Has the tenant established an entitlement to compensation from the landlord for damages or loss under the Act, regulations or tenancy agreement?
3. Is it necessary to issue Orders to the landlord for compliance with the Act, regulations or tenancy agreement?
4. Are repair or emergency repair Orders required?
5. Has the tenant established a basis to suspend or set additional conditions upon the landlord's right to enter the rental unit?

Background and Evidence

The tenant has been residing in the rental unit for approximately one year and is required to pay \$595.00 in rent on the 1st day of every month. The rental unit is one of six living units located in a converted building owed by the landlord. Prior to living in this rental unit the tenant resided in another rental unit in the same building for approximately seven years.

Notice to End Tenancy

On August 31, 2011 the landlord personally served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use of Property (the Notice) with an effective date of October 31, 2011. The Notice indicates the reason for ending the tenancy is because *the rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, child) of the landlord or the landlord's spouse.*

The landlord submitted that the landlord's 39 year old son intends to move into the rental unit. The landlord explained that his son moved into the landlord's home during the summer on a temporary basis. The landlord's son has decided to return to school to advance his education and works part-time. Accordingly, the landlord's son requires affordable housing. Therefore, the landlord has decided to provide his son with accommodation in the rental unit that is currently occupied by the tenant.

The landlord submitted that this rental unit was chosen because it is the most economical unit in terms of size and the amount of rent he receives for the unit. The landlord acknowledged that there is another unit that is similar in size to the rental unit;

however, the landlord explained that the other unit is occupied by the landlord's very experienced caretaker for which a larger amount of rent is paid.

The tenant submitted that the landlord has ulterior motives for wanting to end the tenancy. The tenant provided the following possible motives for the landlord wanting to end his tenancy:

- The landlord has been "stealing" electricity and refuses to honour a rent reduction promised to the tenant;
- The tenant's repeated requests for repairs that go unanswered;
- The tenant has made repeated complaints that the neighbour having an "illegal" guest; and,
- The tenant was successful in disputing an additional rent increase.

The tenant also submitted that he has not been provided proof that the landlord has a son or that the son is attending school. The tenant asked to be provided either the landlord's son birth certificate or picture identification to verify the son had the same last name as the landlord.

During the hearing, the landlord produced a signed letter from an educational institution confirming enrolment of the landlord's son starting September 2011. The letter was provided to me and the tenant for review. The name of the student had the same last name as the landlord.

The landlord responded to the tenants other submissions as follows:

- The tenancy agreement provides for heat to be included in rent. The rental units are heated by a central furnace; however, due to the location of the rental unit, heat from the central furnace is not very effective. A baseboard heater in the rental unit provides supplementary heat. The electricity consumed by the baseboard heater is reflected on the tenant's hydro bills. The tenant calculates the amount of hydro attributable to the baseboard heater and upon presentation to the landlord the landlord has been writing cheques to the tenant to compensate him for electricity used to power the baseboard heater.
- The landlord is unaware of repeated requests for repairs from the tenant and any necessary repairs have been dealt with.
- The landlord acknowledged the tenant complains of the caretaker having a guest; however, this is a matter between the caretaker and the landlord and the tenant has been informed as much.

- The landlord acknowledged that a request for an additional rent increase was unsuccessful; however, the landlord has accepted and abided by that decision.

Monetary compensation

For each of the applications filed by the tenant the tenant has requested compensation of \$25,000.00. The monetary order worksheets that accompanied the applications indicated the amounts claimed were for “goods, services, wages”. During the hearing the tenant stated that he is seeking compensation for the time he has spent preparing for these disputes as well as photocopying costs, cost of supplies and mileage.

Orders for compliance

The tenant requests an Order that the landlord have an electrician re-route the wiring for the tenant's baseboard heater to the landlord's hydro meter. The landlord objected to this request as he does not know that it is possible and submitted that it does not make economic sense since, according to the landlord's calculations, the landlord compensates the tenant approximately \$6.50 per month for the electricity used by the baseboard heater.

The tenant submitted that the caretaker living in unit #5 has an “illegal guest” and requests that the landlord be ordered stop the caretaker from his this guest visit. The tenant submitted that this guest disturbs his quiet enjoyment as there are more people walking past his unit door.

The landlord responded by stating he has spoken to the caretaker and the landlord is satisfied that this guest does not reside with the caretaker. Rather, the guest lives elsewhere and has a mother-like relationship with the caretaker. The landlord submitted that the tenant started complaining about the caretaker's guest only after the caretaker notified the landlord that the tenant was smoking in his unit. The landlord presented into evidence a warning letter written to the tenant in December 2010 and the tenant's written complaint about the caretaker's guest written by the tenant in January 2011.

The tenant refuted the landlord's statements by submitting that he had complained to the landlord about the caretaker's guest, in writing, before January 2011. I asked him to produce a document that would substantiate his position. The tenant could not produce any such document.

Orders for emergency repairs

The tenant submitted that there are rats in the storage shed. I informed the tenant that such a complaint does not fall under the definition of “emergency repairs” as defined by

the Act and that I would consider this concern under the tenant's request for repair orders.

Orders for repairs

Below I have summarized the tenant's request for repairs and the landlord's responses.

<u>Tenant's request for repairs</u>	<u>Landlord's response</u>
The bathroom window is broken and has been broken since the beginning of the tenancy even though move-in inspection report does not reflect it.	The move-in inspection report shows window was not broken. Landlord has not seen the broken window.
A railing is missing in the common stairway. The tenant's parents feel unsafe using the stairway.	A railing is not missing. Rather, there is a small section of stairs that do not have a railing and it has been this way for 25 years.
The front door to the building does not latch and this is a fire hazard.	The front door does not have a latch. Rather, it has a closing mechanism that has passed inspection by the fire department.
Emergency contact information should be posted although the tenant has been provided the information in writing.	The landlord asked caretaker to post contact information and this was done the other day.
Rats are in the storage shed. The tenant attributes this to holes in the siding.	Upon receiving tenant's applications landlord became aware of the tenant's complaint of rodents in the storage shed. The landlord has instructed the caretaker to put rat poison in the shed. The landlord described the shed as being old shed with an earthen flooring.

Request for new locks

The tenant requested that the locks be changed and the landlord not be provided a copy of the key to the rental unit. The tenant acknowledged that he is not aware of any illegal entry by the landlord during his tenancy. However, the tenant explained that he is making this request because he heard from a previous tenant that the landlord damaged the rental unit after that tenant vacated and then blamed it on the that tenant.

The landlord denied damaging a rental unit of a former tenant. The landlord did not agree there was a need to change the locks or for the landlord to be without a copy of the key to the rental unit.

Analysis

Having considered all of the evidence presented to me, I make the following findings and provide the following reasons for my findings, based on the balance of probabilities.

Notice to End Tenancy

Section 49 of the Act permits a landlord to end a tenancy if the landlord or a close family member of the landlord intends, in good faith, to occupy the rental unit. Where a Notice to End Tenancy comes under dispute, the landlord bears the burden to show the tenancy should end for the reason indicated on the Notice.

Residential Tenancy Policy Guideline 2 provides a statement of policy with respect to the good faith requirement. The policy guideline 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 occupy or convert the premises 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. Similarly, if the landlord is attempting to avoid his/her legal responsibilities as a landlord, or is attempting to obtain an unconscionable or undue advantage by ending the tenancy, the intent of the landlord may not be 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.

In support of the landlord's position, the landlord has provided a letter written by the school at which the landlord's son is enrolled. The letter substantiates the landlord's submission that his adult son has decided to return to school in Victoria and I find it reasonable that the landlord wishes to provide affordable housing to his adult son by permitting him to occupy one of his rental units. I find the landlord also provided a reasonable explanation as to why the landlord chose this particular rental unit over other

units. Therefore, I am satisfied the landlord intends to provide housing to his son in the rental unit and the landlord has met the first part of the two part test as described above.

The tenant raised specific issues in calling into question the landlord's good faith intention to end the tenancy; however, I found that the landlord provided a logical and reasonable rebuttal to each of the issues raised by the tenant. I found the tenant has a tendency to exaggerate as evidenced by referral to the landlord "stealing" electricity and the caretaker having an "illegal" guest. In addition, the tenant conducted himself inappropriately during the hearing and the landlord's conduct was reasonable and appropriate. In contrast, I found the landlord's responses to my enquiries and the issues raised by the tenant to be very reasonable. Therefore, I find, based on the balance of probabilities, that the landlord's primary motive for ending this tenancy is to provide affordable housing for his son and I do not find the landlord is primarily motivated by an ulterior motive.

In light of the above, I uphold the Notice to End Tenancy. The tenant must vacate the rental unit by the effective date of October 31, 2011. Pursuant to section 51(1) of the Act, the tenant is entitled to compensation equivalent to one month's rent. If the tenant has paid rent for October 31, 2011 the landlord must refund the rent paid pursuant the requirements of section 51(1).

Monetary compensation

Section 72 of the Act provides that a party may recover the filing fee paid for their application; however, there is no other provision in the Act that compensates a party for their time and efforts to prepare or participate in a dispute resolution proceeding. Therefore, I find no basis for awarding the tenant compensation of \$25,000.00 as claimed on each of his applications.

Orders for compliance, repairs and new locks

As the tenancy is about to end and I found insufficient evidence of significant violations or need for repairs that would interfere with the tenant's ability to occupy the rental unit for the remaining days of this tenancy, I make no Orders for compliance or repairs as As the tenant did not satisfy me that the landlord has violated the landlord's restricted access rights afforded to him under section 29 of the Act I make no order that the locks be changed. Nor do I authorize the tenant to change the locks.

In light of the above findings, all three of the tenant's applications are dismissed.

Conclusion

The tenant's applications have been dismissed. The Notice to End Tenancy has been upheld and the tenancy shall end October 31, 2011. The tenant is required to return vacant possession of the rental unit to the landlord no later than October 31, 2011. 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: October 12, 2011.

Residential Tenancy Branch