



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MT, OPT, FF

Introduction

This hearing was scheduled to deal with a tenant's application to cancel a Notice to End Tenancy for Landlord's Use of Property and an Order of Possession for the tenant. Both parties appeared at the 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

On April 30, 2012 a hearing took place and a decision was issued under file no. ##### with respect to the same matter under dispute. That decision has been declared a nullity by the Director. As the previous decision was declared a nullity this matter has not been previously decided upon.

The tenant requested an amendment to request more time to file this application. As I heard the previous application (file no. #####) was terminated and this application filed due to possible misinformation provided to the applicant, and given the decision for the first decision has been declared a nullity, in keeping with procedural fairness, I granted the tenant more time to make this application. Accordingly, I proceeded to hear from the parties with respect to the merits of the matter.

At the commencement of the hearing the tenant indicated she had a witness with her. During preliminary discussions the witness began answering questions asked of the tenant and I instructed the witness to excuse himself from the hearing. The tenant had confirmed the witness had left. During the hearing the witness spoke out again and I determined the witness had been listening during the time he was supposed to be excluded. The witness was ordered to leave the hearing once again and the tenant confirmed that he was gone. I did not believe the witness had left and in exploring ways to deal with this procedural matter the landlord indicated she wanted to proceed even if the witness had not left. I continued with the hearing and it was determined the witness had in fact continued to listen in on the proceeding. Since the witness refused to be

excluded when he was instructed to do so, I informed the parties that I would not be hearing from the witness.

Finally, it was confirmed that the tenant is currently in possession of the rental unit thus it is not necessary to further consider the request for an Order of Possession for the tenant. The remaining issue to be determined is whether the Notice to End Tenancy should be upheld or cancelled.

Issue(s) to be Decided

Should the 2 Month Notice to End Tenancy for Landlord's Use of Property be upheld or cancelled?

Background and Evidence

The tenant has been residing in the rental unit for approximately 14 years. The tenant is the landlord's daughter. The landlord and the tenant's witness are former spouses that continue to reside at and co-own the property where the rental unit is situated.

The landlord issued a 2 Month Notice to End Tenancy for Landlord's Use of Property (the Notice) to the tenant and posted it on the tenant's door on March 19, 2012. The Notice indicates the reason for ending the tenancy is because the landlord intends to convert the rental unit for use by a caretaker, manager or superintendent of the residential property.

The landlord testified that the residential property and the adjacent parcel of land total 5.94 acres which the landlord described as oceanfront farm land. The landlord and the co-owner have been working the farm for 16 years and it has been a lot of work. The landlord wants the farm to be affordable and qualify for farm status so that her daughter can afford to live on the property in the future. To accomplish this the landlord wishes to have persons interested in raising livestock or growing crops live on the property and do necessary work on the property, such as building or mending fences. The landlord has been responding to advertisements posted by people who want to farm but the landlord has not posted any advertisements of her own. The landlord claimed she has been responding to advertisements via email; taking resumes; and, interviewed a prospective couple the same morning as the hearing.

The tenant testified that she has not seen any changes or new developments to the property. The landlord and her daughter continue to do the mucking of the stalls and a part time worker comes in to do other work. The yard work and heavy work has been

done by the male co-owner. Further, the property has not been worked so that it can grow crops. The tenant attributes the landlord's motives to the landlord being angry and spiteful since the tenant did renovations to the rental unit a few years ago, with the co-owner's permission. The tenant also indicated the eviction has nothing to do with farming the property but more to do with the tenant helping the landlord's brother, which the landlord just evicted from another rental unit on the property.

The landlord submitted she has planted thousands of seeds and seedlings, acquired new gardens, including a greenhouse and solarium. In addition, there are orchards on the property that may be used for growing food. The landlord acknowledged she was upset about the changes to the rental unit but claims she tolerated this, in addition to other undesirable behaviour of the tenant.

The landlord requested that I make a finding or deem her to be the only landlord despite the property is co-owned by herself and her former spouse. The landlord submitted that this is necessary as the tenant has begun paying rent to the co-owner and in the past the tenant has sought the co-owners permission to make changes to the rental unit.

The only documentation received from the landlord in support of ending the tenancy was a one-page submission. The written submission describes how the landlord, or the land, is classified as breeding and training horses for resale and that she is transitioning to use the land for crops and livestock to generate necessary farm revenue. The landlord also described in her submission why the landlord is of the belief the tenant is the worst tenant she has experienced; that the co-owner is conspiring against her despite having other substantial real estate investments; that the co-owner has never supported the landlord's farming efforts; and, that the tenant used inheritance money to make changes to the rental unit that the landlord did not approve of but where approved by the co-owner.

Analysis

While I found the tenant less than truthful with respect to her witness's presence during the hearing, it remains that where a Notice to End Tenancy comes under dispute; the landlord has the burden to prove, based on a balance of probabilities, that the tenancy should end for the reason(s) indicated on the Notice.

The reason for ending the tenancy, as indicated on the Notice, corresponds to section 49(6) of the Act. This part of the Act provides, in part, that:

(6) A landlord may 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 do any of the following:

(e) convert the rental unit for use by a caretaker, manager or superintendent of the residential property;

In order to succeed in showing the tenancy should end under section 49(6)(e) of the Act, the landlord must meet multiple criteria. One is that permits and approvals are in place, if needed; the second is that the landlord will use the property for the reason indicated on the Notice; and, third is that the landlord has a “good faith” intention for ending the tenancy. If any one of these criteria is not proven, the landlord has not met their burden and the tenant’s request to cancel the Notice will be granted.

As the rental unit is currently used as living accommodation and neither party raised the issue of permits or approvals, I am satisfied that the rental unit could be used as living accommodation for a caretaker or manager of the property. However, the tenant called into question the second and third criteria described above.

Given the lack of corroborating evidence, such as copies of: advertisements or emails the landlord referred to in her testimony; receipts for the greenhouse, solarium, seeds or seedlings; or, witness testimony, I find the landlord has not proven that she intends to use the rental unit for a caretaker or manager of the property. Therefore, I find the landlord has not met the second criteria as described previously.

Upon hearing from both parties, I am satisfied there are issues of family strife and marital breakdown that call into question the landlord’s good faith intention. The good faith intention is described in Residential Tenancy Policy Guideline 2: *Ending a Tenancy Agreement Good Faith Requirement* and I refer both parties to that policy guideline for further reference. However, I do not find it necessary to further analyze the landlord’s good faith intention as I have already found the landlord has not met her burden of proof to uphold the Notice, for the reasons provided in the preceding paragraph.

In light of the above, I cancel the Notice to End Tenancy with the effect that this tenancy shall continue. Given the Notice was cancelled I award the filing fee of \$50.00 to the tenant. The tenant is authorized to deduct \$50.00 from a subsequent month’s rent in satisfaction of this award.

I have not given consideration to the landlord's request that I find or "deem" her the only landlord as such a determination was not necessary to make this decision and I am not satisfied I have the jurisdiction to make such a finding given both co-owners meet the definition of landlord under the Act. Accordingly, the authority to act or carry on business as landlord of this property may be an issue that may have to be decided in the appropriate forum.

Conclusion

The Notice to end Tenancy has been cancelled and the tenancy continues. The tenant may deduct \$50.00 from a subsequent month's rent to recover the filing fee paid for this application.

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: May 15, 2012.

Residential Tenancy Branch