



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, CNL, FF

Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenants. The landlord has applied for an Order of Possession for landlord's use of property and to recover the filing fee from the tenants for the cost of the application. The tenants have applied for an order cancelling the landlord's notice to end tenancy for landlord's use of property and to recover the filing fee from the landlord for the cost of the application.

The landlord and both tenants attended the conference call hearing and the tenants were represented by legal counsel. The parties all gave affirmed testimony and provided evidentiary material in advance of the hearing. The parties were given the opportunity to cross examine each other on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for landlord's use of property?
Have the tenants established that the notice to end tenancy for landlord's use of property be cancelled?

Background and Evidence

The landlord testified that this month-to-month tenancy began on December 15, 2011 and the tenants still reside in the rental unit. Rent in the amount of \$1,200.00 per month is payable in advance on the 15th day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$600.00 which is still held in trust by the landlord.

The landlord further testified that the landlord served the tenants with a 2 Month Notice to End Tenancy for Landlord's Use of Property by personally handing it to one of the

tenants on October 15, 2012. A copy of the notice was provided for this hearing, and it is undated, does not contain a name of the landlord, and contains an expected date of vacancy of December 15, 2012. The reason for issuing the notice is stated to be that the rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse. The landlord testified that the landlord's son is presently living with the landlord and wants to move out of the landlord's home and into the rental property. The landlord has already caused the hydro account to be in the landlord's son's name. The landlord intends to renovate and the landlord's son will live in the rental unit rent free, and the landlord may gift the house to the landlord's son in the future.

The rental unit is the main level of a house and 2 other rental units are in the basement of the house. The rental unit contains 3 bedrooms, and one of the basement suites, a 1 bedroom unit, is currently vacant. The landlord did not give the tenant in the other basement suite any notice to vacate, and the vacant unit has been vacant for 2 months. The landlord has not attempted to rent it. The landlord testified that the landlord's son, who is not married and has no children, will require the 3 bedroom rental unit as well as the 1 bedroom vacant unit for his future.

During cross examination the landlord testified that on September 15, 2012 the landlord gave the tenants notice to raise the rent and utilities by 30%, effective November 15, 2012, but the landlord did not collect the increase from the tenants. Rent was next paid by the tenants on October 15, 2012.

The first tenant testified that tenants moved into one of the basement suites on the same day that the tenants moved into the upper rental unit of the house. Renovations were completed, such as new windows and carpet, and no further renovations are required.

The other tenant testified that when paying the rent on October 15, 2012 the tenant explained to the landlord that the Residential Tenancy Branch had advised that the landlord's notice to increase rent was not a legal increase. Thereafter the landlord said the proposed increase would be withdrawn. Four hours later the landlord served the notice to end tenancy because the landlord cannot collect the increase.

On September 15, 2012, the landlord was in Fiji on vacation and a City inspector was going to inspect the rental house. The landlord had to deal with that upon returning from Fiji and the landlord thought the tenants had complained to the City about an illegal suite. The tenant testified that the landlord wants to rent the basement suite and if the

tenants still live there, the landlord won't be able to continue to rent the illegal suite. The landlord instead raised the rent and utilities to compensate for the rent the landlord would be losing. The tenant further testified that the landlord changed the name on the hydro bill to the landlord's son's name to attempt to prove that the landlord's son is moving into the rental unit.

The tenants' counsel provided submissions on the testimony and evidence, stating that the tenants' test is undisputed. It appears that the landlord wanted more rent and when not successful, the landlord issued the notice to end tenancy. Counsel further submitted that the landlord has not met the good faith requirement.

Further, the notice to end tenancy must be signed and dated and must be in the approved form. The notice to end tenancy issued by the landlord does not contain a name of the landlord and is not dated.

Counsel also submitted that the effective date of vacancy in the notice to end tenancy is incorrect, and while not critical under the *Act*, the effective date of vacancy ought to be a month later than stated in the form because rent is payable on the 15th day of each month and the landlord testified that the tenants were served on October 15, 2012.

Analysis

In the circumstances, I agree with the submissions of counsel. The landlord has not demonstrated a good faith intent in issuing the notice to end tenancy. The landlord's son did not attend the hearing to testify as to his intentions with respect to the rental unit, and I accept the testimony of both parties that the landlord attempted to raise the rent by as much as 30%, and I further accept the testimony of the tenant that 4 hours after the tenant advised the landlord that the rent increase was not legal, the landlord issued a notice to end tenancy. None of the parties ever testified to any conversations taking place wherein the landlord notified the tenants of the intention to issue the notice; the landlord simply withdrew the notice to raise the rent, and then issued the notice to end tenancy.

I further agree with submissions of counsel that the notice to end tenancy issued by the landlord is not complete on its face as required by the *Residential Tenancy Act*, which states:

- 52** In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
 - (b) give the address of the rental unit,

- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

In this case, the notice is not dated, and therefore is not effective according to the *Residential Tenancy Act*.

The *Act* also requires a landlord or a tenant to give a notice to end a tenancy the day before the day in the month that rent is payable under the tenancy agreement. The parties agree that rent is payable on the 15th day of each month, and the landlord testified that the tenants were served on the 15th day of the month of October, 2012. Incorrect effective dates in a notice to end tenancy are automatically changed to the nearest date that complies with the *Act*. Therefore, the notice to end tenancy would be effective January 15, 2013 if it were completed properly.

The landlord should also be advised that when issuing a notice to end tenancy for landlord's use of property, the *Act* requires the landlord to pay the tenants the equivalent of one month's rent.

In summary, I find that the landlord has not issued a notice to end tenancy that is enforceable because the notice is not dated. I further find that the landlord has failed to establish any good faith intent and the landlord's application for an Order of Possession is dismissed without leave to reapply. The tenants' application for an order cancelling the notice to end tenancy is hereby allowed, and the tenancy will continue. Since the tenants have been successful with the application, the tenants are also entitled to recover the \$50.00 filing fee from the landlord for the cost of the tenants' application, and I hereby order the tenants to reduce rent for a future month by \$50.00.

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed without leave to reapply.

The tenants' application for an order cancelling a notice to end tenancy for landlord's use of property is hereby allowed; the notice to end tenancy issued by the landlord with an effective date of vacancy of December 15, 2012 is cancelled and the tenancy will continue.

I further order the tenants to reduce the rent payable for a future month by \$50.00.

This order is final and binding on the parties and may be enforced.

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 05, 2012.

Residential Tenancy Branch