



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, CNR, FF

Introduction

This hearing was scheduled to deal with a tenant's application to cancel a 2 Month Notice to end Tenancy for Landlord's Use of Property and a 10 Day Notice to End Tenancy for Unpaid Rent. Both parties appeared or were represented 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

The male landlord appeared at the commencement of the hearing; however, at approximately seven minutes after the hearing commenced the male landlord, who sounded very intoxicated, became extremely hostile toward the tenant and began yelling loudly and making irrelevant accusation and allegations toward her. The tenant indicated she was intimidated and harassed by the landlord and after observing the landlord's conduct during the hearing I concluded that I could not conduct a fair hearing if such behaviour were to recur. Therefore, I excluded the male landlord from the hearing pursuant to Rule 8.7 which prohibits rude, antagonistic or inappropriate behavior during a dispute resolution hearing.

By way of the evidence submissions presented to me I noted that after the Application was filed the 10 Day Notice posted on the tenant's door on December 7, 2012 was apparently nullified by payment of the outstanding rent; however, the landlord also served the tenant with two subsequent Notices to End Tenancy: a 1 Month Notice dated December 21, 2012 and a 10 Day Notice to End Tenancy for Unpaid Rent dated January 4, 2013. Both parties had submitted evidence related to the subsequent Notices to End Tenancy and I was prepared to amend the Application to indicate the tenant was disputing all of the Notices to End Tenancy. This was not necessary, as the tenant confirmed that she did feel it was possible to continue with the tenancy as she no longer felt safe at the residential property or able to use and enjoy the rental unit due to the intimidation and harassment by the male landlord. The tenant indicated she was prepared to remove her possessions from the rental unit at the end of January 2013.

Issue(s) to be Decided

Should the 2 Month Notice to End Tenancy for Landlord's Use be upheld or cancelled?
Should the 1 Month Notice to End Tenancy for cause be upheld?
Should the 10 Day Notice to End Tenancy for Unpaid Rent be upheld or cancelled?

Background and Evidence

The written tenancy agreement indicates the tenancy commenced March 1, 2012 and the tenant is required to pay rent of \$650.00 on the 1st day of every month. The tenant was served with a 2 Month notice to End Tenancy for Landlord's Use of Property dated November 30, 2012 with a stated effective date of January 31, 2013. The parties were in dispute as to whether the 2 Month Notice served upon the tenant had a stated reason on the second page; however, both parties understood and agreed that the stated purpose for ending the tenancy should read:

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.

It was undisputed that in November 2012 the female landlord suffered a major illness and the female landlord now requires assistance from family as she can no longer drive.

The landlord acknowledged that she had mentioned to the tenant that her sister may move from Saskatchewan to help the landlord but that it is the landlord's intention to fulfill the stated reason on the 2 Month Notice by having the landlord's daughter move into the rental unit as more living space is desired for the family.

It was undisputed that the tenant has not paid rent for January 2013 and the tenant indicated, as mentioned previously, that she intends to have her possessions removed by the end of January 2013.

The landlord was agreeable to permitting the tenant occupancy until February 1, 2013. The landlord was also made fully aware and understood that the tenant remains entitled to use and occupancy of the rental unit and the residential property, free from unreasonable disturbance or interference from the landlords during the remainder of the tenancy, and that such a violation may entitle the tenant to further compensation.

Analysis

Section 68 of the Act provides me the authority to amend a Notice to end tenancy where:

- (a) the person receiving the notice knew, or should have known, the information that was omitted from the notice, and
- (b) in the circumstances, it is reasonable to amend the notice.

Upon hearing from the parties, I am satisfied the above criteria have been met and I amend the 2 Month Notice to indicate the reason the tenancy is ending is because the rental unit will be occupied by the landlord or the landlord's spouse or the close family member (father, mother, child) of the landlord or the landlord's spouse, as provided under section 49 of the Act.

As it is now the tenant's intention to vacate the rental unit I consider the tenant's request to cancel the 2 Month Notice withdrawn and I find that the 2 Month Notice remains in effect. Accordingly, the tenant is entitled to compensation under section 51(1) of the Act and the landlord is obligated to fulfill the stated purpose in accordance with section 51(2) of the Act. Should the landlord fail to fulfill the stated purpose on the 2 Month Notice the tenant may be entitled to additional compensation under section 51(2) of the Act.

As the tenant is entitled to compensation equivalent to one month's rent under section 51(1) of the Act I cancel the 10 Day Notice issued for unpaid rent on January 4, 2013.

I find the issuance of the 1 Month Notice on December 21, 2012 to be a moot issue as the tenancy is set to end January 31, 2013 under the 2 Month Notice issued prior to the 1 Month Notice.

I provide the landlord with an Order of Possession effective February 1, 2013 as requested by the landlord.

I further find it necessary and appropriate under the authority afforded me under section 62 of the Act to ORDER the landlords to comply with section 28 of the Act during the remainder of the tenancy. Below I have reproduced section 28 for the parties' further reference:

Protection of tenant's right to quiet enjoyment

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

As indicated to the parties during the hearing, a landlord's violation of a tenant's right to quiet enjoyment may entitle the tenant to receive compensation from a landlord.

I order the landlords to pay the tenant the filing fee paid for this application. The tenant is provided a Monetary Order of \$50.00 to serve upon the landlord.

Conclusion

The tenancy is ending January 31, 2013 pursuant to a 2 Month Notice to End Tenancy for Landlord's Use of Property. The tenant is not obligated to pay rent for January 2013 pursuant to the tenant's compensation provided under section 51(1) of the Act. Accordingly, the 10 Day Notice issued January 4, 2013 is cancelled. The issuance of the 1 Month Notice on December 21, 2012 is a moot issue.

The landlord has been provided an Order of Possession effective February 1, 2013 as requested. I have provided the tenant with a Monetary Order in the amount of \$50.00 for recovery of the filing fee paid for this Application.

The landlords have been ordered to comply with section 28 of the Act during the remainder of the tenancy.

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: January 16, 2013

Residential Tenancy Branch

