



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, LRE

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy and an order to restrict the landlord's access.

The hearing was conducted via teleconference and was attended by the tenant only.

Based on the written submission of the landlord, referred to below, I find that the landlord has been sufficiently served with the documents pursuant to Section 71 the *Act*.

Prior to the hearing the landlord submitted into evidence a letter stating that she is "withdrawing my request for a two-month vacancy." She goes on to say that she sees no need to attend this hearing.

Because the landlord does not specifically state that she intends to cancel the 2 Month Notice to End Tenancy for Landlord's Use of Property that was issued on January 31, 2014 I must still determine whether or not the Notice should be cancelled, whether or not the landlord has attended the hearing. In addition, the tenant had sought additional orders that must be considered. For these reasons the hearing continue in the absence of the respondent landlord.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property and to an order to suspend or set conditions on the landlord's right to enter the rental unit, pursuant to Sections 29 and 49 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenant confirmed by her testimony that the tenancy began in October 2012 as a month to month tenancy for a monthly rent of \$500.00 due on the 1st of each month with a security deposit of \$250.00 paid.

The tenant provided into evidence a copy of a 2 Month Notice to End Tenancy for Landlord's Use of Property dated January 31, 2014 with an effective vacancy date of March 31, 2014. The notice provided no reason that the landlord was intending to use the rental unit for.

The tenant provided documentary evidence and testimony that the landlord has delayed the delivery of mail to her; has opened her mail; and in some instances failed to give the tenant mail that she has confirmed with senders that they had mailed to her. The tenant explained the mail is usually delivered to the landlord's portion of the rental property by being placed through a mail slot in her door but that there is a separate mailbox nearby.

The tenant has submitted in her documentary evidence several complaints regarding the landlord's repeated entry into the rental unit when adequate notice of entry has not been provided or in some cases no notification was provided at all. One of these entries included, unbeknownst to the tenant, a dog and attendant to inspect her rental unit for bedbugs after the landlord had found bedbugs in her own portion of the residential property.

The tenant has submitted evidence and testimony that the landlord repeatedly turns down the hot water tank temperature and despite repeated requests for it to be turned up the landlord continues to leave it turned down. In addition, the tenant submits that the plumbing in the rental unit is faulty and often is faced with clogged drains and fixtures.

Analysis

Section 49 of the *Act* allows a landlord to end a tenancy by issuing a notice to end tenancy with an effective date not earlier than 2 months after the date the tenant receives the notice and the day before the day in the month that rent is payable under the tenancy agreement if:

- i. The rental unit will be occupied by the landlord or the landlord's spouse or a close family member of the landlord or the landlord's spouse;
- ii. A family corporation owns the rental unit and it will be occupied by an individual who owns, or whose close family member owns, all the voting shares;
- iii. All conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give a notice because the purchaser or a close family member intends in good faith to occupy the rental unit;
- iv. The landlord has all the necessary approvals required by law, and intends in good faith, to renovate or repair the rental unit in a manner that requires the rental unit to be vacant;
- v. The landlord intends to convert the residential property to strata lots or a not-for-profit housing cooperative;
- vi. The landlord intends to convert the rental unit for use by a caretaker, manager or superintendent for the residential property; or

- vii. The landlord has all necessary permits and approvals required by law to convert the rental unit to a non-residential use.

Section 52 of the *Act* stipulates that for a notice to end tenancy issued by the landlord to be effective the notice must be in writing; be signed and dated by the landlord; give the address of the rental unit; state the effective date of the notice; state the grounds for ending the tenancy and be in the approved form. As the landlord has failed to indicate a reason to end the tenancy, I find the notice fails to comply with the requirements under Section 52.

Section 29 of the *Act* states a landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- a) The tenant gives permission at the time of the entry or not more than 30 days before the entry;
- b) At least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the purpose for entering and the date and time of the entry;
- c) The landlord provides housekeeping or related services under the tenancy agreement and the entry is required for those purposes;
- d) The landlord has an order of the director authorizing the entry;
- e) The tenant has abandoned the rental unit;
- f) An emergency exists and the entry is necessary to protect life or property.

Based on the undisputed testimony from the tenant I find the landlord has failed to comply with the requirements under Section 29 that requires notice to be provided if the landlord intends to enter the rental unit for any of the valid reasons noted above. As such, I order that the landlord is only authorized to enter the rental unit in accordance with Section 29.

When written notice is required I caution the landlord that if the notice is delivered by posting the notice on the rental unit door; she must account for 3 days for the notice to be deemed received and then 24 hours after the 3rd day the landlord may enter the rental unit.

I note that should the landlord fail to comply with the above noted order the tenant is at liberty to file an Application for Dispute Resolution seeking compensation for the landlord's failure.

In regard to mail delivery, I order the landlord to ensure any mail received by the landlord that is addressed to the tenant must be delivered, unopened, to the tenant in a mutually agreeable manner on the day that it is received by the landlord pursuant to the delivery schedule of Canada Post to the subject address.

Again, I note that failure of the landlord to comply with this order may result in the tenant obtaining an order for compensation.

Section 32 of the *Act* requires a landlord to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard for the age, character and location of the rental unit make it suitable for occupation by a tenant.

In regard to the issues raised by the tenant of hot water; plumbing; and bedbugs I caution the landlord of her obligations under Section 32 to ensure she maintains the property in state of repair that complies with health, safety and housing standards required by law. I note the tenant remains at liberty at any time to file an Application for Dispute Resolution seeking repairs to be completed should the landlord failed to meet her obligations under Section 32.

Conclusion

Based on the above, I find the 2 Month Notice to End Tenancy for Landlord's Use of Property issued on January 31, 2014 is invalid. I order the Notice is cancelled and the tenancy remains in full force and effect.

As noted above I also order the landlord to restrict her access to the rental unit to that allowed under the *Act* after appropriate notice is provided and to separate and deliver the tenant's mail unopened.

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: March 26, 2014

Residential Tenancy Branch

