



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF, LAT, MND, FF

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the two month Notice to End Tenancy was sufficiently served on the Tenant by posting on December 11, 2014. Further I find that the Application for Dispute Resolution/Notice of Hearing filed by each party was sufficiently served on the other. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the two month Notice to End Tenancy dated December 11, 2014?
- b. Whether the tenant is entitled to an order authorizing the changing of the locks?
- c. Whether the tenant is entitled to an order recovering the cost of the filing fee?
- d. Whether the landlord is entitled to A Monetary Order and if so how much?
- e. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into a written tenancy agreement that provided that the tenancy would start on August 1, 2012. The present rent is \$735 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$360 at the start of the tenancy.

On December 9, 2014 the tenant was successful in obtaining a repair order and a monetary order in the sum of \$500 for the reduced value of the tenancy.

Tenant's Application to cancel the two month Notice to End Tenancy:

The landlord served a two month Notice to End Tenancy that provided that "The landlord intends to convert the rental unit for use by a caretaker, manager or superintendent of the residential property." The landlord testified there are 66 units in the rental property.

The landlord testified he needs to convert the tenant's unit to a manager's office for the following reasons:

- a. The order dated December 9, 2014 requires the landlord to fix a leak in the rental property. This will be very costly to the landlord especially given that the landlord intends to tear down the building in the next couple of year.
- b. The tenant is a poor tenant and has shifted her anger to me
- c. The tenant has wrongfully removed notices he has placed on notice boards
- d. The tenant has put false information on Craigslist and defamed him
- e. The tenant walked a dog without a lease on the rental property.
- f. The tenant is not friendly to other tenants
- g. The tenant is not welcome by other tenants
- h. The tenant has violated building regulations many times.

The tenant disputes much of the landlord's evidence.

Section 49(6) provides as follows:

49(6)(e) 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;

Policy Guideline 2 includes the following:

GOOD FAITH REQUIREMENT

Good faith is an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage.

A claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End the Tenancy. This might be documented through:

- a Notice to End Tenancy at another rental unit;
- an agreement for sale and the purchaser's written request for the seller to issue a Notice to End Tenancy; or
- a local government document allowing a change to the rental unit (e.g., building permit) and a contract for the work.

If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy.

If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive for ending the tenancy.

After carefully considering all of the evidence I determined the landlord has failed to establish a good faith intention to end the tenancy based on the grounds in the two month notice. The landlord testified that one of the reasons for ending the tenancy was to avoid the obligation to make the repairs in the order of December 9, 2014. The landlord testified those repairs will be costly especially given that the landlord intends to tear down the building in a couple of years.

Section 32(1) of the Residential Tenancy Act provides as follows:

Landlord and tenant obligations to repair and maintain

- 32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

In my view the law does not permit a landlord to avoid its responsibilities under the section 32(1) of the Residential Tenancy Act by using the provision under section 49 to terminate the tenant's tenancy. This is an ulterior motive which evidences the lack of good faith. The other reasons given by the landlord may or may not support a Notice to End the Tenancy for cause. However, the landlord cannot end a tenancy for landlord's use because he is unable to get along with the tenant or does not like the tenant. These reasons negate a honest intention that is required by the Act. Similarly the landlord failed to produce sufficient evidence to end the tenancy based on the other reason given by the landlord.

As a result I order that the two month Notice to End Tenancy dated December 11, 2014 be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged.

I dismissed the tenant's application for an order authorizing a tenant to change the locks. The tenant failed to present sufficient evidence to establish the landlord has been entering her rental unit in a way not permitted under the Act.

The tenant has for the most part been successful with the within application. **As a result I order the landlord pay to the tenant the cost of the filing fee in the sum of \$50 such sum may be deducted from the security deposit.**

Landlord's Application:

The Application for Arbitration filed by the landlord initially sought a monetary order in the sum of \$600 for damage to a fridge. In my decision dated December 9, 2014 I determined the landlord failed to prove the tenant damaged the fridge and I ordered that the landlord supply a new fridge. The landlord then amended his Application for Dispute Resolution and claimed \$600 on the basis the tenant has failed to pay for parking.

The landlord testified it charges \$20 a month for parking. The tenant has parked in the underground parking for 30 months and the landlord is entitled to \$600. The tenant testified the representative of the landlord at the time she rented the rental unit told her that she could have a specific spot in the underground parking for \$20 per month or she could park anywhere for free.

The tenancy agreement is unclear but appears to provide that parking is included in the rent. It does not provide for a specific sum for parking. The landlord failed to provide evidence that would dispute the testimony of the tenant that she could park in the underground parking for free provided a specific parking stall was not assigned to her. The landlord failed to prove this claim and as a result this claim is dismissed. The landlord was not successful in its application and as a result I dismissed the landlord's application to recover the cost of the filing fee.

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 08, 2015

Residential Tenancy Branch

