Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GOLD TEAM MANAGEMENT SERVICES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL MNR MNDC

Preliminary Issues

At the outset of this hearing the Tenant submitted that she spoke with an accent and as a result she may not say what I wanted to hear. I explained to the Tenant that I normally rephrase the testimony that was provided to ensure that I understood what was being submitted and that I would do that with her testimony. I informed the Tenant that the burden was upon her to advise me of anything that she did not understand so that I could provide further explanation until such time she understood what was being said.

During the course of this hearing I made sure to rephrase all of the testimony provided by both parties and both the Tenant and the Landlord confirmed my interpretations. The Tenant spoke in what I would refer to as broken English, which is common in those who speak English as a second language. The Tenant did not request further clarification on anything that was said during the course of this hearing.

On a procedural note, the Tenant initially had her telephone on speaker phone which caused a loud echo at my end. I instructed the Tenant to pick up her phone and to take it off of speaker. At that point I was able to understand the Tenant`s testimony.

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenant on February 5, 2015, to cancel a 2 Month Notice for landlord`s use of the property and to obtain a Monetary Order.

The hearing was conducted via teleconference and was attended by the Owner`s Agent (hereinafter referred to as Landlord) and the Tenant. Each party gave affirmed testimony.

At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

Upon review of service of documents the Landlord argued that the Tenant did not properly serve her documents to his office; rather, she named the owner as a respondent to this dispute and served the owner with her evidence. The Landlord noted that his company issued and served the 2 Month Notice, therefore, the Tenant should have named and served his company and not the owner. The Landlord confirmed that the owners provided him copies of the Tenant`s application, the 2 Month Notice and a couple of other papers that were submitted with the application. He said that he later received an email from the Tenant that had some links to advertisements and some other documents attached to them but that he did not receive any other evidence.

The Tenant testified that she personally served the owner with her application and some of her evidence on February 8, 2015. She did not serve the owners or the Landlord with copies of the documents that were submitted in the large binder; as they already had those documents from the Supreme Court proceedings. She stated that the remaining documents were served to the owners and the Landlord via email, as they normally communicated by email.

Section 88 of the Residential Tenancy Act (the Act) stipulates methods of service for documents and evidence, other than an application for dispute resolution, which includes personal service, registered mail, and facsimile, if the respondent is a landlord. Email is not a method of service that is provided for under the Act. Therefore, any evidence that had been emailed to the owners and/or the Landlord will not be considered in my decision.

The Residential Tenancy Branch Rules of Procedure (hereinafter referred to as the Rules of Procedure) # 3.1 provide that the applicant must, within 3 days of the hearing package being made available by the Residential Tenancy Branch (RTB), serve each respondent with copies of: the application for dispute resolution; the notice of dispute resolution proceeding letter provided to the applicant by the Residential Tenancy Branch; a detailed calculation of any monetary claim being made; and all evidence the applicant wishes to rely upon.

The hearing package contains instructions on evidence and the deadlines to submit evidence to the RTB and the other party, as does the Notice of Hearing document provided to the Tenant.

In this case the Tenant submitted a large volume of evidence to the RTB without sending a copy as evidence, for this proceeding, to the Landlord. The Landlord confirmed that he had a large volume of evidence that was used during their Supreme Court hearing(s); however, he could not confirm that those contents were the same as what was provided to the RTB for this application. Considering evidence that was not served upon all parties for a specific dispute would be a breach of the principles of natural justice.

Based on the foregoing, the Tenant breached #3.1 of the Rules of Procedure by not providing the respondent with copies of all evidence she wished to rely upon for this

matter. Therefore, I did not consider the large volume of evidence submitted to the RTB by the Tenant on February 16, 2015. I did however consider the Tenant's testimony and the documents that had been properly served upon the owner and Landlord.

The Tenant confirmed receipt of the Landlord's evidence which included copies of the following: the tenancy agreement; two copies of the 2 Month Notice; a document titled "Owner's Intention to Occupy Request for Tenancy Termination"; and Canada Post receipts. The same evidence was served upon the RTB in accordance with the Rules of Procedure, and will be considered in my decision along with the evidence submitted in the Landlord's testimony.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Is the named respondent a party to this dispute?
2. Should the 2 Month Notice to end tenancy issued January 21, 2015, be upheld or cancelled?

Background and Evidence

The Landlord argued that the Tenant`s application should be dismissed because she named one of the owners as the respondent and personally served the owner with her application; rather than naming and serving his company, who had issued the 2 Month Notice. The Landlord testified that the Tenant was previously provided a letter advising her that his company was managing this property as of July 2014 and that she was to deal directly with them. The Landlord argued that since that time the Tenant has been advised on several occasions to deal directly with him and not the owners; however, the Tenant continues to ignore their instructions and harasses the owners.

The Tenant testified that her tenancy agreement lists the owners as her landlords and # 5 of the November 24, 2014 settlement agreement, that was written by the Landlord's lawyers, states as follows *"…Note the [owner's surname] and [Landlord's corporate name] (collectively called the "landlord")…[*reproduced as written with the exclusion of the owner's name and the Landlord's corporate name]. Therefore, she was of the opinion that she correctly served the owner with copies of her application for dispute resolution and her evidence.

The Landlord submitted a copy of the tenancy agreement into evidence which indicates the Tenant entered into a written fixed term tenancy agreement that listed both owners as the Landlords. The tenancy began on March 15, 2014 and is scheduled to switch to a month to month tenancy after March 31, 2015. Rent is payable on the first of each month in the amount of $1,600.00 and on February 18, 2014 the Tenant paid $800.00

as the security deposit. The Landlord described the rental property as being a detached bungalow with a “nanny” suite in the basement that has a separate entrance. The Tenant rents the entire house.

The Landlord testified that the owners made a family decision to live in the property so he served the Tenant with the 2 Month Notice to end tenancy, on behalf of the owners. The 2 Month Notice was posted to the Tenant’s door on January 21, 2015. A second copy of the 2 Month Notice was sent to the Tenant by registered mail.

The Landlord stated that as agent for the owners he did his due diligence of informing the owners of their obligations with respect to serving a 2 Month Notice. The owners then signed an “Intention to Occupy” document, as provided in their evidence.

Upon further clarification the Landlord stated that the owners used to reside in the rental house and they have recently decided that they needed to evict the Tenant so their son could occupy the rental property. The Landlord submitted that he was not familiar with the process of defending a 2 Month Notice as he understood that the Act automatically provided the owners the right to end a tenancy if they determined that a family member would occupy the rental unit.

At this time I explained to the participants that when a 2 Month Notice comes under dispute then the landlord has the burden to prove the following statutory requirement: (1) the landlord must meet the burden to prove good faith; and (2) the landlord or close family member will occupy the property. The Landlord stated that he understood both aspects of this test and that he had nothing further to add to his submission.

The Tenant testified that this is the fourth time that the Landlord has attempted to evict her and she is so stressed with being harassed by the Landlord that she is now looking for another place to live. That being said, the Tenant said she does not want to have to move until the end of July 2015 as her child is currently attending school in their current neighbourhood.

The parties were given the opportunity to settle these matters. The Landlord submitted that when considering the Tenant’s behaviors in the past, he did not feel confident that she would comply with a mutual agreement if it required her to move out. As a result, the Landlord did not want to settle these matters and stated he wished to proceed with the arbitration.

It was undisputed that these parties had attended dispute resolution regarding two 10 Day Notices to end tenancy for unpaid rent and one 1 Month Notice issued for cause. They attended one dispute resolution hearing and the other matter was dealt with through the Direct Request process. The parties also attended Supreme Court in response to the Tenant’s October 15, 2014 application for judicial review disputing an Order of Possession and Monetary Order granted to the Landlord through the Direct Request Process. The parties reached a settlement agreement with respect to the Supreme Court issues on November 24, 2014. Neither party objected to me considering

the previous Decisions held in the RTB records, nor did they dispute me considering the November 24, 2014, settlement agreement that was submitted by the Tenant at the time she filed her application for dispute resolution.

The Tenant summarized the issues by stating that the problems began near the end of June 2014 when a hot water tank broke and flooded the basement. Shortly afterwards the owners hired the Landlord who has attempted to evict her ever since. She pointed to the November 24, 2014 settlement agreement where the Landlord agreed that they would complete the basement repairs by December 10, 2014. The Tenant argued that those repairs were not completed until the end of December 2014.

The Tenant asserted that the lawyer was very insistent that they reach an agreement so that they did not have to go before the judge. She alleged that the insistence to settle was because she had proof that the evidence that was submitted in the Direct Request process, to obtain the eviction order, was not valid. She noted that the settlement agreement was signed the day before they were scheduled to attend before the judge. The Tenant stated that she thought that when she signed the November 24, 2014, settlement agreement, in regards to the Supreme Court application, that everything was resolved, repairs would be finalized, and her tenancy would continue smoothly from that point. She said that was not the case and a few weeks after the repairs were completed she was issued with the 4th eviction notice, the 2 Month Notice, which says it is for landlord's use.

The Tenant argued that the owners are Asian and that it is the culture of Asian people to live together. She submitted that the owners live in a very large house in which they currently reside with their one and only son. The Tenant asserted that the owner's son is too young to reside in the house alone as he is only 18 years old and is still attending secondary school. The Tenant stated that even if they did want the son to reside at this house, he would not need the entire space of the full house. She argued that even the neighbours have told her that neither the owners nor their son have any intention on residing at the house.

In closing the Landlord stated that the owners were inexperienced landlords, which is why they hired his company in July 2014, to manage this tenancy. He argued that both the owners and his company have followed the required processes in dealing with the serious situations that have occurred with this tenancy. He is of the opinion that the Act provides that any owner, at any time they see fit, has the right to end a month to month tenancy fi they want their family to occupy the rental unit.

The Tenant submitted a copy of the 2 Month Notice into evidence which was served in accordance with section 49 of the Act for the reason 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 RTB Record confirms that the parties were involved in two prior disputes. As noted above, the parties confirmed they had attended Supreme Court regarding one of those decisions and that the Tenant has been issued a total of 4 eviction notices. A brief description is listed below in chronological order.

The first dispute involved the Tenant's application to cancel a 10 Day Notice issued in June 2014 for unpaid rent and to cancel a 1 Month Notice for cause issued July 11, 2014. The Tenant filed her application to dispute the 10 Day Notice on June 20, 2014, which was amended to include a request to cancel the 1 Month Notice. The parties attended a hearing on August 18, 2014, during which the parties reached a settlement agreement that set aside both the 10 Day Notice and the 1 Month Notice, and awarded the Tenant $3,450.00 in monetary compensation.

On August 21, 2014, a third notice was issued and allegedly served to the Tenant, which was a 10 Day Notice for unpaid rent. The Landlord filed an application through the Direct Request process on September 3, 2014, and was granted an Order of Possession and a Monetary Order. The Direct Request process is an Ex Parte Proceeding based solely on the submissions of a landlord. Therefore, the Tenant was not provided an opportunity to submit evidence or arguments in her defence.

The Tenant filed an application for Review Consideration in response to the orders granted through the Direct Request process on September 19, 2014. That application for Review Consideration was dismissed on October 03, 2014.

On October 15, 2014, the Tenant petitioned the Supreme Court for Judicial Review of the Decision and Orders that were granted through the Direct Request Process, alleging that she was never served the 10 Day Notice dated August 21, 2014 and that rent was not required to be paid as a result of the August 18, 2014 settlement agreement. This matter was scheduled to be heard in Supreme Court on November 25, 2014. The parties entered into a settlement agreement on November 24, 2014 listing 9 points of agreement, which included the following two points:

8. *The Residential Tenancy Branch Order For Possession of September 16, 2014 and the Court Writ of Possession are no longer of any force or effect*

9. *This settlement conclusively resolves all Residential Tenancy Branch issues and Court proceedings between the parties to day.*

Then on January 21, 2015 the Landlord issued the fourth eviction notice, a 2 Month Notice to end the tenancy for landlord's use which is effective March 31, 2015.

Analysis

After careful consideration of the totality of events listed above, and on a balance of probabilities I find as follows:

In determining the issues before me I must first determine if the named respondent is a party to this dispute.

As noted above, the Tenant filed her current application for Dispute Resolution on February 5, 2015, naming one of the property owners as respondent to the dispute. The Landlord argued that the application should be dismissed because it was his company who issued the 2 Month Notice and they were not named as respondent; nor were they served notice of this application.

Section 1(a) of the Act defines a landlord, in relation to a rental unit, to include, among other things: the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord permits occupation of the rental unit under a tenancy agreement, or exercises powers and performs duties under this Act, the tenancy agreement or a service agreement.

The undisputed documentary evidence included the tenancy agreement which listed the owners as landlords and a settlement agreement regarding a Supreme Court Action which states at # 5 that the property manager (Landlord) and the owners were *collectively called the "landlord".*

Based on the foregoing, and in absence of documentary evidence to prove the Tenant was prohibited by law or by mutual agreement to have direct contact with the owners, I find the Tenant naming and serving one of the owners as the respondent to her dispute is not a fatal flaw to her application, as that owner is considered a landlord as defined under Section 1(a) of the Act.

In addition to the above, the Landlord and the other owner were also considered landlords pursuant to the settlement agreement and Section 1(a) of the Act. Therefore, in consideration of the Landlord's arguments, and for consistency, I have amended the style of cause of this decision to include the names of the corporate Landlord and both owners as respondents to this dispute, pursuant to section 64(3)(c) of the Act.

Upon review of the 2 Month Notice to End Tenancy, I find the Notice to be completed in accordance with the requirements of section 52 of the Act and I find that it was served upon the Tenant in a manner that complies with section 89 of the Act.

Where a 2 Month Notice to End Tenancy comes under dispute, the Landlord has the burden to meet or satisfy a two part test as set forth under the Act. Section 49 (3) of the *Act* states that a landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

The *Residential Tenancy Policy Guideline # 2* sets out the two part test for the "good faith" requirement as follows:

1) The landlord must truly intend to use the premises for the purposes stated on the notice to end the tenancy; and
2) the landlord must not have a dishonest or ulterior motive as the primary motive for seeking to have the tenant vacate the residential premises.

The issuance of the 2 Month Notice is not yet another mere coincidence. I recognize that there are occasions in which the passage of time or a change in circumstances may create an entirely new environment which was not part of the reasons for previous eviction notices. However, after considering the 2 Month Notice on its merits, I do not find that its issuance was driven solely by the owner's intention to have their son occupy the rental unit.

It is clear to me that the Landlord and/or owners have an ulterior motive for ending the tenancy. This fixed term tenancy began only three months prior to the hot water tank breaking and flooding the rental property, which created costs to the owners for repairs plus $3,450.00 payable to the Tenant. That event was the catalyst that changed the relationship between the Tenant and owners. It was also the event which caused the owners to hire a professional management company whose job, based on their actions and events listed above, may not be to simply manage the property. Rather, the evidence suggests that the Landlord was hired to end this tenancy and evict the Tenant.

Notwithstanding the Landlord's submission that he advised the owners of their obligations under the Act and arranged for them to sign an "Owner's Intention to Occupy Request for Tenancy Termination" document; I favored the Tenant's submissions that it is not the owner's intention to have their son occupy the rental unit. I favored the Tenant's submissions after careful consideration of the events as outlined above, and the undisputed submissions that the owners' son is only 18 years of age and still in secondary school. Furthermore, it is highly unlikely that the owners' intentions are to lose their rental income in order to have their young son reside alone in their large rental property. It is not enough to simply sign a paper that says the owner's family will be residing in the rental unit to prove the test for good faith.

Based on the above, I find the Landlord provided insufficient evidence to meet the two part test to uphold the 2 Month Notice to end tenancy. Accordingly, I find in favor of the Tenant's application and I cancel the 2 Month Notice to end tenancy issued January 21, 2015.

Section 59(2) of the Act stipulates that an application for dispute resolution must (a) be in the applicable approved form, (b) include full particulars of the dispute that is to be the subject of the dispute resolution proceedings, and (c) be accompanied by the fee prescribed in the regulations.

Upon review of the Tenant's application for monetary compensation, there was no explanation written on the application for dispute resolution, or attached, describing what the monetary claim was for. Nor was there a monetary order worksheet provided with the application. Rather, the Tenant submitted evidence to the RTB on February 16,

2015, listing previous decisions and dollar amounts. As noted above that evidence was not properly served upon the Landlord.

Based on the above, I find the Tenant's application for monetary compensation did not meet the requirements as set out in section 59(2) of the Act as it did not provide a clear explanation of what the monetary claim consisted of. Accordingly, I dismissed the Tenant's monetary claim, with leave to reapply.

Conclusion

The 2 Month Notice to end tenancy for landlord's use issued January 21, 2015, is HEREBY CANCELLED, and is of no force or effect. This tenancy continues until such time as it is ended in accordance with the Act.

I caution the landlord that further attempts to end the tenancy for unlawful reasons or in bad faith may constitute harassment which could found a monetary claim by the Tenant for loss of quiet enjoyment.

The Tenant's monetary claim is dismissed, with leave to reapply.

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 04, 2015

Residential Tenancy Branch