Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF

Introduction

This hearing was convened by way of a conference call in response to an Application for Dispute Resolution (the "Application") made by the Tenants to: cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property (the "Notice"); and, to recover the filing fee from the Landlord for the cost of the Application.

Both Tenants and the Landlord appeared for the hearing and provided affirmed testimony. The Landlord confirmed receipt of the Tenants' Application and their documentary evidence by registered mail. The Landlord confirmed that he had not submitted any evidence prior to this hearing.

The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence, make submissions to me, and cross examine the other party on the evidence provided. I have carefully considered the evidence provided by the parties.

Issue(s) to be Decided

- Is the Notice served to the Tenants valid?
- Are the Tenants entitled to cancel the Notice?

Background and Evidence

Both parties agreed that this month to month tenancy started on May 1, 2010. The Tenants paid a $450.00 security deposit at the start of the tenancy. Rent in the amount of $900.00 is payable by the Tenants on the first day of each month.

The female Tenant testified that the parties had undergone an Arbitration hearing on April 17, 2015 with the Residential Tenancy Branch to force the Landlord to do emergency repairs. The Tenants referred to the written decision of the Arbitrator who

had conduct of those proceedings, the file number of which appears on the front page of this Decision. The Arbitrator considered the evidence of both parties and made a finding that the Landlord was to make emergency repairs and that they were entitled to a rent reduction in a Decision dated April 18, 2015.

The female Tenant testified that before the Arbitration hearing of April 17, 2015 the Landlord had served them with a letter dated April 1, 2015 which acknowledged a problem with repair issues in the rental unit. The letter, which was provided into evidence by the Tenants, concludes with instructions that if the Tenants cannot wait for the repairs to be remediated then they should move out by the end of June 30, 2015.

The female Tenant testified that after the April 17, 2015 hearing, the parties received the decision on April 25, 2015. On the same day the Landlord personally served them with the Notice. The Notice was provided into written evidence and shows the reason for ending the tenancy is because the Landlord has all the necessary permits and approvals required by law, and intends in good faith, to renovate or repair the rental unit in a manner that requires it to be vacant. I noted that the Notice used by the Landlord, referenced at the bottom as “#04018-3 (11/2005)” is an older version of the current approved form.

The female Tenant submitted that the Landlord has issued the Notice in bath faith and seeks to end the tenancy as revenge for having to do the repairs resulting from the previous hearing. The Tenants also submitted that the Landlord does not have any permits or approvals.

The Landlord testified that he served the Notice to the Tenants because he intends to replace the old 1978 carpets in the living room with laminate flooring because he has to have the carpets cleaned yearly which is costing him money. The Landlord testified that he also wants to rewire the rental unit so that he is able to use LED lighting and replace the kitchen cupboards.

The Landlord was asked whether he had any approvals or permits for the electrical work to which he answered no. When the Landlord was asked why the replacement of the carpet and kitchen cupboards required the ending of the tenancy, the Landlord explained that as he will be doing this work himself it will be taking place over a long period of time and therefore, the Tenants should not be there.

The Tenants responded that this was the first time they were learning of these works and that they were not major renovations. The female Tenant testified that they were

willing to facilitate these “minor” renovations by working with the Landlord to undertake them as the female Tenant has some time off planned for the future.

The parties were asked if they had any questions or further evidence to provide at the conclusion of the hearing. No further testimony or evidence was provided.

Analysis

Section 49(8) of the *Residential Tenancy Act* (the “Act”) states that a tenant may dispute a 2 Month Notice to End Tenancy for Landlord’s Use of Property by making an Application within 15 days after the date the tenant receives it.

I accept the undisputed evidence that the Tenants were served with the Notice on April 24, 2015. Accordingly, I find that the Tenants made their Application to dispute the Notice on April 30, 2015, this being within the required time limits set by the Act.

Sections 49(7) and 52(e) of the Act requires that a landlord use the approved form when ending the tenancy for this reason. However, in this case, the Landlord served the Tenants with a previous version of the Notice. As a result, I turn my mind to Policy Guideline 18 to the Act which provides guidance on the use of forms. The policy guideline states that a form not approved by the Director is not invalid if the form used still contains the required information and is not constructed with the intention of misleading anyone.

I have examined the Notice and I find that even though it is not the current one prescribed by the Act, it contains all of the necessary information that the Tenants needed to know. I find that the Notice used by the Landlord created no prejudice to the Tenants as they disputed the Notice within the correct deadlines stipulated on the Notice. This deadline is consistent with the Act.

In determining the Tenant’s Application on whether the Notice should be cancelled, Section 49(6) (b) of the Act states that a landlord who wants to end the tenancy for renovations or repairs that require the tenant to vacate the rental unit, must intend to do so in **good faith**. The Tenants argued that the Notice had been served to them in retaliation of them being successful during a previous hearing which forced the Landlord to do repairs to the rental unit. The Landlord stated that he wanted to do these repairs because they were required.

In considering the good faith element of the Notice, I turn my mind to Policy Guideline 2 to the Act which provides for the good faith requirement. The policy guidelines states:

"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."

[Reproduced as written]

Based on the foregoing, I find the evidence points to the fact that the Landlord has issued the Notice to the Tenants in bad faith. I accept the Tenants' testimony that the Notice has been issued to them in retaliation of a previous hearing. This is based on the fact that the Landlord had previously informed the Tenants in a letter dated April 1, 2015 that if they were could not wait for remediation work being carried out then they should move out; as a result of this letter, the Tenants forced the remediation work through arbitration and were successful in getting an order for the Landlord to do the work. This demonstrates that the Landlord's remedy for dealing with issues during a tenancy is to seek to end the tenancy rather than deal with the issues at hand.

Furthermore, the Landlord failed to provide any evidence of permits and approvals that have been obtained in order to carry out work that would require such approval, such as

the electrical work the Landlord testified to. I find that replacement of a carpet and kitchen countertops are renovations that do not require the tenancy to end and the fact that the Landlord choses to do this work by himself at a slower pace is not a sufficient reason for ending a tenancy.

Based on the foregoing, I am not satisfied that the Landlord has all the permits and approvals required by law and that he intends to carry out renovations that require the tenancy to end. I also accept the submission that the Notice is being used as a retaliatory measure to a previous dispute between the parties to end the tenancy and this is not the purpose of such a Notice. Therefore, I find that the Notice must be cancelled.

As the Tenants have been successful in cancelling the Notice, I award the Tenants the $50.00 filing fee pursuant to Section 72(2) (a) of the Act. The Tenants may recover this cost by deducting $50.00 from their next installment of rent. The Tenants may attach a copy of this decision when paying their next installment of rent.

Conclusion

The Landlord has failed to prove the Notice and that he was seeking to end the tenancy in good faith. Therefore, the Notice dated April 24, 2015 is hereby cancelled. The tenancy will continue until it is ended in accordance with the Act.

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: June 15, 2015

Residential Tenancy Branch