



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, FF, O

Introduction

This hearing was convened by way of conference call in response to the tenant's application to cancel a Two Month Notice to End Tenancy for Landlords Use of the Property; for an Order for the landlord to comply with the *Residential Tenancy Act (Act)*, regulations or tenancy agreement, other issues; and to recover the filing fee from the landlord for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The landlord confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the tenant entitled to an Order to cancel the Two Month Notice to End Tenancy?
- Is the tenant entitled to an Order for the landlord to comply with the *Act*?

Background and Evidence

The parties agreed that this tenancy started in December 2003 with the previous landlord. The tenant testified that at that time the tenant and previous landlord had a verbal agreement that rent was \$750.00 per month including all utilities. The rent was raised during the course of the tenancy to \$900.00 and continued to include all utilities. The parties agreed that this landlord became the new owner and landlord of the property on August 01, 2015. A written tenancy agreement was produced but was not signed by either party.

The landlord testified that the tenant was served a Two Month Notice to End Tenancy (The Notice) on July 28, 2015 by posting the Notice to the tenant's door. The landlord testified that he intends to occupy the rental unit and one other rental unit in the building and intends to convert both units to one suite for his own occupation. To this effect the landlord cited the reason on the Two Month Notice that the rental unit will be occupied by the landlord, the landlord's spouse or a close family member of the landlord or the landlord's spouse. The Notice has an effective date of October 01, 2015. The landlord testified that the third unit did have tenants in but they gave notice and moved out and another tenant has moved into that unit. That unit will remain a rental unit. The landlord testified that he is currently homeless and living at his mother's house while his belongings are stored in a container at the rental property waiting to move into the unit.

The landlord orally requested an Order of Possession at the hearing to be effective as soon as possible.

The tenant testified that the landlord withdrew the tenant's satellite TV service and the tenant's internet service which had previously been included in the rent. When the tenant disagreed with this and deducted the cost of these services from his rent the landlord served the tenant with the Notice. The landlord also served another tenant living on the top floor with the same Notice. The tenant calls the landlord's good faith

into question as the landlord cannot occupy two units at the same time. The tenant seeks to have the Notice cancelled and for the tenancy to continue.

The tenant seeks an Order for the landlord to comply with the *Act*, regulation or tenancy agreement. The tenant testified that as the landlord has removed services from the tenancy the landlord must either restore these services or reduce the tenant's rent to the same value as the services. The tenant testified that he has deducted the amount of \$125.00 for the loss of the satellite service and \$40.00 for loss of the internet service. The tenant testified that as the landlord has placed a container on the driveway the tenant has also lost use of part of the outside area he previously used for recycling and tools. Due to this the tenant has deducted a further \$100.00 a month for loss of this area. The tenant paid \$900.00 in rent and utilities for August and only \$635.00 in rent and utilities for September and October.

The landlord agreed the tenant could pay a reduced rent for the loss of the satellite and internet service but disputed the tenant's rent reduction for the storage of the container as this is stored on common property and the tenant still has parking space on the drive.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the tenant's claim to cancel the Notice to End Tenancy; the issue to be decided is whether the landlord has met what Residential Policy Guideline #2 describes as a two part test: First, the landlord must truly intend to use the premises for the purposes stated on the Notice to End Tenancy. Second, the landlord must not have a dishonest or ulterior motive as the primary motive for seeking to have the tenant vacate the residential premises.

For example, the landlord may intend to occupy the rental unit as stated on the Notice. That intention may; however, be motivated by dishonest or undisclosed

purposes; if the primary motive for the landlord ending the tenancy is to retaliate against the tenant, then the landlord does not have a "good faith" intent.

Similarly, if the landlord is attempting to avoid his/her legal responsibilities as a landlord, or is attempting to obtain an unconscionable or undue advantage by ending the tenancy, the intent of the landlord may not be a "good faith" intent.

Rather, the circumstances may be such that dishonesty may be inferred.

If the "good faith" intent of the landlord is called into question, the burden is on the landlord to establish that he/she truly intends to do what the landlord indicates on the Notice to End, and that he/she is not acting dishonestly or with an ulterior motive for ending the tenancy as the landlord's primary motive.

On the first part of the test, that is whether the landlord truly intends to occupy the rental unit, I accept the landlord's evidence that he intends to move into this unit and the unit above and renovate the units into one. Currently the landlord is residing at his mother's home and has all his belongings in a storage container at the property. This leads me to believe that the landlord does intend to occupy the rental unit and would not have made such preparations as to store his belongings in a container at the rental property had the landlord not intended to move into the unit or if the landlord was living somewhere else where his property could be placed. I find it is plausible that the landlord will convert both units into one living space and although the landlord did remove some utilities from the tenant I do not believe this was done with the intention of an ulterior or dishonest motive to gain possession of the rental unit.

Consequently the tenant's application to cancel the Two Month Notice is dismissed. I will however draw the parties' attention to s. 51 of the *Act* which states:

51 (1) *A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.*

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(2) In addition to the amount payable under subsection (1), if

(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or

(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

I refer the parties to s. 55(1) of the Act which states:

55 *(1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

(a) the landlord makes an oral request for an order of possession, and

(b) the director dismisses the tenant's application or upholds the landlord's notice.

The landlord has orally requested an Order of Possession. Having upheld the Notice to End Tenancy and dismissed the tenant's application I will grant that Order. The effective date on the Notice to End Tenancy in this matter was October 01, 2015; however, the

Notice was posted to the tenant's door and was deemed served on August 01, 2015. S. 49(2)(a) and (b) of the *Act* states:

(2) Subject to section 51 [tenant's compensation: section 49 notice], a landlord may end a tenancy for a purpose referred to in subsection (3), (4), (5) or (6) by giving notice to end the tenancy effective on a date that must be

(a) not earlier than 2 months after the date the tenant receives the notice,

(b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement,

Consequently, as the Notice was not deemed served until August 01, 2015, and rent is due on that day; the effective date of the Notice is amended to October 31, 2015 pursuant to s. 53 of the *Act* as the Notice should have been deemed served on July 31, 2015 in order to have been effective on October 01, 2015. I therefore grant the landlord an Order of Possession effective at 1.00p.m. on October 31, 2015.

With regard to the tenant's application for an Order for the landlord to comply with the *Act*, regulations or tenancy agreement; as this tenancy will end on October 31, 2015, I am not prepared to issue any Orders concerning this matter as any such Orders would not be enforceable after the tenancy has ended.

As the tenant's application to cancel the Notice has been unsuccessful the tenant must bear the cost of filing his own application.

Conclusion

The tenant's application is dismissed without leave to reapply.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective on October 31, 2015. This Order must be served on the tenant. If the tenant fails to comply with the Order, the Order may be filed in the Supreme Court and enforced as an Order of that Court.

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: October 23, 2015

Residential Tenancy Branch

