



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, OPL, OPB, FF; CNC, CNL, OLC, O

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for cause, for landlords' use of property, and for breach of an agreement with the landlords, pursuant to section 55; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

This hearing also dealt with the tenant's cross-application pursuant to the *Residential Tenancy Act* ("Act") for:

- cancellation of the landlords' 1 Month Notice to End Tenancy for Cause ("1 Month Notice"), pursuant to section 46; and
- cancellation of the landlords' 2 Month Notice to End Tenancy for Landlord's Use of Property, dated October 31, 2014 ("2 Month Notice"), pursuant to section 49;
- an order requiring the landlords to comply with the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 62; and
- other remedies, identified as an order requiring the landlords to issue a 1 Month Notice to another tenant.

The female landlord ("landlord"), the "male landlord" and the tenant attended the hearing and were each given a full opportunity to be heard, to present their sworn testimony, to make submissions and to call witnesses. The landlords intended to call a witness, "KM," but his evidence was not relevant to these applications, so he did not testify at this hearing. This hearing lasted approximately 86 minutes in order to allow both parties to fully present their submissions.

Both parties confirmed receipt of the other party's application for dispute resolution hearing package. In accordance with sections 88, 89 and 90 of the *Act*, I find that both parties were duly served with the other party's application.

The tenant confirmed personal receipt of the landlords' 2 Month Notice on August 23, 2015. In accordance with section 88 of the *Act*, I find that the tenant was duly served with the landlords' 2 Month Notice on August 23, 2015.

The landlords confirmed that they did not serve a 1 Month Notice upon the tenant. Accordingly, the landlords' application for an order of possession for cause and the tenant's application to cancel the 1 Month Notice are dismissed.

Issues to be Decided

Should the landlords' 2 Month Notice be cancelled? If not, are the landlords entitled to an Order of Possession?

Are the landlords entitled to an order of possession for breach of an agreement?

Is the tenant entitled to an order requiring the landlords to comply with the *Act*, *Regulation* or tenancy agreement?

Is the tenant entitled to an order requiring the landlords to issue a 1 Month Notice to another tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of both parties' claims and my findings are set out below.

Both parties agreed that this month-to-month tenancy began on November 1, 2013. Monthly rent in the current amount of \$480.00 is payable on the first day of each month. A security deposit of \$235.00 was paid by the tenant and the landlord continues to retain this deposit. The tenant continues to reside in the rental unit, which is one room in a two-bedroom basement suite of a house. KM lives upstairs on the main floor of the same house. A written tenancy agreement was provided for this hearing.

The landlords seek to end this tenancy because the tenant breached a term of the addendum to the tenancy agreement by storing her vehicle in the driveway of the rental

unit. The landlords stated that there is shared parking in the driveway and if other tenants move into the vacant room of the basement suite, they will need to use this parking, as there is no street parking. They indicated that the tenant's vehicle cannot be moved as it is parked in the corner of the driveway. They also noted that the tenant's vehicle blocks the driveway which causes emergency concerns, and prevents yard maintenance and other contractors from entering the unit to complete yard work and other repairs. The landlords stated that the tenant has been storing her vehicle in the driveway since the beginning of this tenancy and that they provided a written notice to the tenant to remove her vehicle in June 2014. Both parties provided copies of insurance documents for the tenant's vehicle, indicating that it is insured for storage purposes. The tenant acknowledged that she stores her car in the driveway and that it is insured for that purpose. She stated that she advised the landlords about this before she moved into the rental unit and the male landlord agreed to it. The male landlord testified that he agreed to the initial storage of the car but not for long-term purposes. The tenant maintained that her car does not impede yard maintenance or other contractors, as it is parked in the corner, and KM's car is parked beside hers.

The landlords also seek to end this tenancy pursuant to a 2 Month Notice. The landlords' 2 Month Notice, entered into written evidence, identified the following reason for seeking an end to this tenancy:

- *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 landlord testified that she wants her 88-year-old father to move into the rental unit. She indicated that he currently lives in an area with ongoing outside construction, whereby he is disturbed by the noise and suffers from rashes due to the dust and pollution. The landlords provided photographs of the rashes and the construction in the area, a list of prescriptions for the rashes and a doctor's note stating that he suffers from rashes due to a dusty environment and that he needs to move to a less dusty area. The landlords also submitted immigration and funeral home documents showing that the father's wife passed away. The landlord noted that her father lives with her sister currently because his wife died and he would be alone otherwise. The landlord noted that the rental unit does not have stairs, which is an advantage because her father cannot walk up stairs. The landlord indicated that the property that she currently resides in, as well as her other properties, all have stairs, so they are not viable alternatives.

The landlord stated that on August 8, 2015, her father requested to move into the rental unit. She indicated that he originally wanted to move in a year prior but he changed his mind as his rash condition was non-existent at that time. The landlord explained that

although there are two rooms in the basement of this house, her father needs both rooms as he needs his privacy and her sister will be visiting him and staying overnight in that room. The landlord also noted that there was a previous arbitration between the parties on April 16, 2014, wherein the tenant was having issues with another co-tenant living in the other room of the basement suite. The Arbitrator for that hearing dismissed the landlord's application for an order of possession for cause and cancelled the landlord's 1 Month Notice to End Tenancy for Cause. The file number for that hearing appears on the front page of this decision. The landlord stated that the tenant cannot live with other tenants, as demonstrated by the problems with her co-tenant in April 2014. The landlord indicated that the 2 Month Notice was served upon the tenant on the same date that they received her application.

The tenant claimed that the landlords have not issued this 2 Month Notice in good faith. She stated that the landlord's father currently lives with the landlord's sister, which is in conflict with his privacy requirement of living on his own in the rental unit. The tenant indicated that the rental unit is located in a noisy area where there is constant traffic as early as 5:30 a.m. and onwards, such that the landlord's father will not be able to sleep at the rental unit. She indicated that there is no heat in the rental unit, which will also be a challenge for the landlord's father. The tenant testified that she has had numerous problems with the upstairs tenant, KM. Both parties produced numerous statements, letters and emails for this hearing, regarding altercations between the tenant and KM. Both parties also produced police reports regarding these altercations.

Analysis

Breach of an agreement with the landlords

Residential Tenancy Policy Guideline 8 states the following with respect to material terms:

A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement. To determine the materiality of a term during a dispute resolution hearing, the Residential Tenancy Branch will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. It falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term. The question of whether or not a term is material is determined by the facts and circumstances surrounding the creation of the tenancy agreement in question. It is possible that the same term may be material in one agreement and not material in another. Simply because the parties have put in the agreement that

one or more terms are material is not decisive. During a dispute resolution proceeding, the Residential Tenancy Branch will look at the true intention of the parties in determining whether or not the clause is material.

I dismiss the landlord's application for an order of possession for breach of an agreement, without leave to reapply. I find that the landlords failed to prove that the parking provision is a material part of the addendum to the tenancy agreement, such that its breach warrants an end to this tenancy.

The parking provision indicates that the parking "should not be used for long-term storage of car..." I find that this provision is not a material term of the tenancy agreement. The conduct of the landlords in failing to issue a warning letter to the tenant until June 2014 when they have been aware of this issue since November 2013, shows that the provision is not material to their tenancy agreement. If it was, the landlords would have taken action sooner and more often than issuing one written letter in June 2014 and filing their application in September 2015. Both parties agreed that the tenant's vehicle is parked in the corner of the driveway and the landlord submitted a photograph confirming same. There are no other tenants living with the tenant in the basement suite requiring a parking space, so that is not an issue at this time. The landlords failed to prove that yard maintenance, other contractors or emergency personnel have been unable to access the rental unit, due to the tenant's vehicle being parked in the driveway.

2 Month Notice

Subsection 49(3) of the Act states that landlords may end a tenancy in respect of a rental unit where the landlords or a close family member of the landlords intend in good faith to occupy the rental unit.

According to subsection 49(8) of the Act, a tenant may dispute a 2 Month Notice by making an application for dispute resolution within fifteen days after the date the tenant receives the notice. The tenant received the 2 Month Notice on August 23, 2015, and filed her initial application on August 21, 2015 and her amended application on September 1, 2015. Therefore, her amended application is within the 15 day time limit under the Act. The onus, therefore, shifts to the landlords to justify the basis of the 2 Month Notice.

Residential Tenancy Policy Guideline 2: Good Faith Requirement When Ending a Tenancy states:

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 that they do not have an ulterior motive for ending the tenancy.

I find that the landlords had a number of ulterior motives for issuing the 2 Month Notice and it was not done in good faith. It seems that this tenancy has had a number of difficulties that have been ongoing for some time. The landlords noted that in a previous hearing in April 2014, they were attempting to evict the tenant pursuant to a 1 Month Notice for cause because the tenant was unable to get along with her co-tenant at the time, and therefore, she cannot live with anyone else including the landlord's father. The landlords applied to have the tenant evicted on three different grounds in their application at this hearing: breach of an agreement with the landlord, a 1 Month Notice for cause which was not issued to the tenant, and the 2 Month Notice. The majority of the written evidence submitted by the landlords related to the tenant's ongoing altercations with KM, the tenant living upstairs. The landlords also insisted that the tenant's storage of her vehicle was a material breach of the tenancy agreement such that it warranted an end to this tenancy.

Based on a balance of probabilities and for the reasons outlined above, I find that the landlords have not met their onus of proof to show that the landlord's father intends to occupy the tenant's rental unit in good faith.

Accordingly, I allow the tenant's application to cancel the landlords' 2 Month Notice. The 2 Month Notice, dated August 23, 2015, is cancelled and of no force or effect. The landlords' application for order of possession for landlords' use of property is dismissed without leave to reapply. This tenancy continues until it is ended in accordance with the Act.

As the landlords were unsuccessful in their application, they are not entitled to recover the \$50.00 filing fee from the tenant. The landlords must bear the cost of the filing fee.

Tenant's Application

The tenant sought an order requiring the landlords to issue a 1 Month Notice to End Tenancy for Cause to the upstairs tenant, KM. There is no provision in the *Act* that allows me to order a landlord to issue a notice to end tenancy to a third party.

Therefore, the tenant's application for an order requiring the landlords to comply with the *Act*, *Regulation* or tenancy agreement and for an order requiring the landlords to issue a 1 Month Notice to another tenant, is dismissed without leave to reapply.

Conclusion

The landlords' entire application is dismissed.

The tenant's application to cancel the landlords' 2 Month Notice is allowed. The 2 Month Notice, dated August 23, 2015, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

The tenant's application to cancel the 1 Month Notice is dismissed.

The tenant's application for an order requiring the landlords to comply with the *Act*, *Regulation* or tenancy agreement and for an order requiring the landlords to issue a 1 Month Notice to another tenant, is dismissed.

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: November 09, 2015

Residential Tenancy Branch

