



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF

This hearing convened as a result of a Tenant's Application for Dispute Resolution wherein the Tenant sought an Order cancelling a two month Notice to End Tenancy for the Landlord's use of the rental unit, issued on September 27, 2015 (the "Notice") and to recover the \$50.00 filing fee.

Both parties appeared at the hearing. The Landlord was assisted by her lawyer, K.M. The Tenant was assisted by her friend, B.M. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. Although both parties delivered evidence outside the timelines provided for in the *Residential Tenancy Rules of Procedures*, neither parties raised any issues with respect to service or delivery of documents or evidence and were content to proceed with the evidence as filed.

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.

Issues to be Decided

1. Is the Notice to End Tenancy valid or should it be cancelled?
2. Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

This tenancy began on May 1, 2015 with the Landlord, the Tenant and the Tenant's mother, M.P. Monthly rent was payable in the amount of \$850.00. No written tenancy agreement existed, nor was a security deposit paid.

The Landlord testified that the rental unit was located in a cottage located on a farm which had been in her family since the 1970's. The cottage was attached to the barn, and had been the former creamery before being converted to a cottage. The Landlord stated that a larger residence, the "main house", was located on the family property. The Landlord, at various times, occupied the main house with her parents, as well as the cottage while she was in university and since the passing of her mother, approximately six years prior, has resided in the main house.

The parties disagreed as to the exact date the Tenants began occupying the cottage. It appears as though the Tenant and M.P. moved into the cottage some time in May of 2015. The Landlord testified that on September 1, 2015, M.P. gave verbal notice to end her tenancy and moved from the rental on October 1, 2015.

On September 27, 2015, the Landlord issued the Notice with an effective end date of November 30, 2015. The Landlord issued the Notice in accordance with section 49 of the *Residential Tenancy Act*, which allows the Landlord to end a tenancy if the Landlord, their spouse, or a close family member, intend to occupy the rental unit. Under the provisions related to this section of the *Act*, the Landlord must also give the Tenant the equivalent of one month free rent when ending the tenancy in this manner. The parties agreed that the Landlord had yet to provide the Tenant with this payment.

The Landlord testified that, prior to the subject tenancy, she had never rented the cottage out to third parties. She stated that she issued the Notice as she simply wanted the cottage back, did not want to have renters, and wanted to use the cottage for her own purposes, possibly as a studio or gym. The Landlord testified that she had no intention to rent the cottage out to others once this subject tenancy came to an end.

The Tenant disputed the Notice, alleging the Landlord was not ending the tenancy in good faith. She also claimed the Landlord intends to rent the rental unit to her boyfriend, and that it will therefore not be occupied by the Landlord, her spouse or a close family member as indicated on the Notice.

The Tenant testified that she intended to remain at the cottage for a long time and would not have moved in had she known the Landlord would end the tenancy so

quickly. She further testified that prior to moving into the cottage, she and the Landlord painted and improved the cottage for occupation and that she personally incurred considerable expenses to move and fix up the cottage.

The Tenant stated that she did not insist on a fixed term tenancy as she relied on the fact that she and the Landlord had been friends for more than 20 years and had faith the Landlord would honour her need for a long term rental.

The Tenant submitted that the Landlord does not intend to convert the cottage to a gym and testified that an area in the barn had already been proposed by the Landlord as an appropriate location for a gym.

Analysis

It is clear by the Tenant's submissions that she questions the good faith intent of the Landlord. Section 49(5) of the *Residential Tenancy Act* provides that the Landlord must act in good faith in ending the tenancy.

Residential Tenancy Policy Guideline 2 explains the 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.

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.

Based on the foregoing, the affirmed testimony and evidence and on a balance of probabilities, I find as follows.

I find the Landlord intends in good faith to occupy the rental unit. I accept the Landlord's evidence that she simply no longer wishes to have renters on the property.

The Tenant submitted that she intended to reside in the cottage on a long term basis. Had that been the case, the Tenant could have insisted on a fixed term tenancy of a significant duration. In this case, the tenancy was on a month to month basis and as such the Landlord is entitled to issue a 2 Month Notice to End Tenancy if the Landlord intends to occupy the space.

To occupy a space does not require the Landlord to prepare her meals, bathe or sleep in the rental unit. The Landlord testified she intended to use the rental unit for her own purposes, possibly as a studio, or gym. In any case, she denied she had any intention to re-rent it to others.

The Tenant failed to provide any evidence which would call into question the Landlord's good faith intention to occupy the rental unit. She stated the Landlord advised her, prior to the subject tenancy beginning, that the Landlord's boyfriend was interested in occupying the rental unit. She further stated that the Landlord's boyfriend was "back in the picture". This speculation does not establish that the Landlord intends to rent the cottage to her boyfriend.

The Tenants submissions do not establish pressing or ongoing attempts to evict the Tenant for improper or invalid reasons. The Tenant was made aware of section 51(2) of the *Residential Tenancy Act* would provide her with additional compensation, should the rental unit not be used for the Landlord's stated purpose. For clarity, I reproduce this section below:

- (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.

In consideration of the above, I find the Notice to be valid and enforceable, and I dismiss the Tenant's Application to cancel the Notice. As the Tenant was unsuccessful I also dismiss her claim to recover the filing fee.

During the hearing the Landlord requested an Order of Possession in the event the application was dismissed. As the Tenant's Application to cancel the Notice to End Tenancy was dismissed, and the Landlord made an oral request for an Order of

Possession, I must issue an Order of Possession in accordance with section 55 of the Act.

There is no authority to extend the effective date of the Notice without the Landlord's consent. In this case, the effective date of the Notice was November 30, 2015. The Landlord agreed that should I make an Order of Possession that it could be effective December 31, 2015. Accordingly, **I grant the Landlord an Order of Possession effective at 1:00 p.m. on December 31, 2015.**

Counsel for the Landlord confirmed that should the Tenant have difficulty obtaining alternate accommodation that the Landlord would invite discussions involving extending the possession date for a short while to facilitate the Tenant's move. Counsel for the Landlord requested that such discussions occur between the Tenant and Counsel, not directly between the parties.

Conclusion

The Tenant's Application to cancel the Notice is dismissed. The Tenant's request to recover the filing fee is similarly dismissed. The Landlord made an oral request for an Order of Possession during the hearing, and pursuant to section 55, that request is granted. The Landlord is entitled to an Order of Possession effective at 1:00 p.m. on December 31, 2015, the date agreed upon by the parties.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: December 02, 2015

Residential Tenancy Branch

