Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, LRE, AAT, LAT, OLC, FF

Introduction
As set out in the Interim Decision this hearing dealt with the tenant's application for orders setting aside a 2 Month Notice to End Tenancy for Landlord's Use; suspending or setting conditions on the landlords' right of entry; allowing access to the unit by the tenant or his guests; authorizing the tenant to change the locks on the rental unit; and compelling the landlord to comply with the Act, regulation or tenancy agreement. Both parties appeared and had an opportunity to present their evidence in full.

The tenant submitted voice recordings of four conversations between himself and the landlords. The landlords confirmed that they were able to hear the recordings prior to the first date set for the hearing. These recordings were more than an hour in length and I listened to them in full before writing this decision.

Issue(s) to be Decided
- Is the 2 Month Notice to End Tenancy for Landlord's Use dated September 21, 2015 valid?
- Should any orders be made regarding access to the rental unit by the landlord or the tenant's guests be made and, if so, on what terms?
- Should an order be made allowing the tenant to change the locks on the rental unit?
- Should any other order be made and, if so, on what terms?

Background and Evidence
This month-to-month tenancy commenced July 1, 2014. The monthly rent of $700.00 is due on the first day of the month and includes all utilities. The tenant paid a security deposit of $200.00.

There is a written tenancy agreement. The agreement contains the following clause:

> "Agree to allow landlords to enter suite in your absence to check hot water tank, electrical box, security checks and maintenance."

The rental unit is a small apartment located on the main level of a house. On the ground level is the shared laundry room accessible from the main floor entry and the rental unit. The landlords live upstairs. Their unit has two ordinary sized bedrooms, one small bedroom, and one bathroom. The landlords say there are twelve steps from the main level to the second level.

The tenant is a second year law student. In his testimony he referred to his qualifications as a truck driver and social worker and his work with the RCMP.

The landlords testified that they are very particular about hydro usage because this allows them to keep their costs, and therefore the rent, low.

The landlord acknowledges that he had entered the rental unit on some occasions in the first year of the tenancy because he noticed the lights had been left on. He said that he turned the lights off and then

notified the tenant that he had done so. The tenant testified that while that was true the landlord had actually entered the unit more often than he admitted and that it was not always just to turn the lights off. He also testified that he spoke to the landlord about the inappropriateness of entry without notice.

The parties also testified about other entries to the unit made for the purpose of various repairs. Those entries are not in dispute.

The landlords are 76 and 78 years old. They have three children and two adult grandchildren, none of whom live near this community. One son lives in South Africa and one grandchild lives in the USA; the others live in the province. Their evidence is that around Christmas 2014 their children starting talking to them about making the ground level their main living area. The landlords stated that they have always rented out the unit because they needed the rental income.

Their friends and relatives suggested that the landlords should see if they would be eligible for any financial support that would allow them to remain in their own home. They found out that they needed a letter from their family doctor before they could do anything. They filed a letter from their doctor dated May 25, 2015, addressed to "Whom It May Concern". The letter states:

> "Both [landlords] are increasingly struggling with their mobility as a result of osteoarthritis and their advancing age.
>
> I have advised them that they would be best served by adapting their home so that they use the street level as their main area of residence. This would decrease their need for using the stairs and would significantly improve the quality of their lives."

Within the next two weeks the tenant went to France and the landlords received some interesting financial information.

The landlords were notified, through communications with their bank and Canada Pension, that regulations had changed and a 10% tax had been improperly deducted from their pensions. The wrongful deductions were being returned to them and their respective pensions were being increased. According to the landlords the increase in their pensions equalled the rent they were receiving from the unit. This removed the financial reason for renting the main floor suite.

They testified that they are finding the stairs more and more difficult. They say that the laundry, the garden, and the freezer are on the main level and if they moved their primary living space to the main level they would take the stairs out of their activities of daily living. Their plan is to reserve the upper level as entertaining space and guest quarters, particularly for their family.

While the tenant was in France a female friend stayed in the unit, with the prior knowledge and consent of the landlords. The male landlord says they were leaving for a few days and he wanted the woman to know they were going to be gone. He knocked on the door three times and received no response. He went in with a note written on a piece of cardboard reminding her to turn off the lights when she was out. When he went in she was sitting at the desk with her back to the door, talking on the telephone. He left the note and left.

The friend's letter submitted in evidence states that the landlord knocked on the door at 7:00 when she was sleeping. When she woke up the male landlord was inside.

> "That when I stood up he says he didn't see me, then started to tell me how to use the home. He told me how to do things. I just looked at him and stayed silent because I was afraid.
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> The same day when I came back to the home I found the landlord had entered the home again and posted a sign in the living room. It was instructions for use of the home. I was very uncomfortable and scared because no one should enter another person's home."

The friend called the tenant, very upset. He called the landlord about the improper entry. It is clear that this was not a pleasant conversation; that both the tenant and the landlord were very upset by it; and that this conversation continues to be a sore point with both of them. The tenant testified that his intention was to go to the RCMP as soon as he could after he returned.

When the tenant returned from France the landlords asked to speak to him. The tenant taped this conversation; all 48 minutes of it. The landlords told the tenant that they had decided not to be landlords anymore. They explained how their financial situation had changed. They told the tenant they had been thinking about this for some time but had not wanted to interfere with his exam schedule. They also said they intended to renovate the unit by taking out the wall between the laundry room and moving the female landlord's sewing machine downstairs. They presented him with a letter dated June 21, 2015, that gave him two months notice to end tenancy.

A large part of the conversation was devoted to issues of the landlord's entry of the unit; whether the term in the tenancy agreement was enforceable; and whether the tenant's reaction to the entry was the real reason why he was being served with the notice to end tenancy. Another substantial portion of the conversation was devoted to the tenant telling the landlords that because of his work he was very familiar with the statute and the relevant case law and giving the landlords his version of the relevant law (almost of all of which was wrong). The third portion of the conversation consisted of the tenant telling the landlords that the legal process would be long and expensive; that they would be unsuccessful; and indicating that he would be prepared to leave if given satisfactory financial compensation. The tenant does his best to get the landlords to negotiate with him.

The landlord's evidence is that shortly thereafter, in a conversation that occurred in the front yard, the tenant told the male landlord that he could file criminal charges against him for the entry into the unit and they could go to jail for that offence but he would not press criminal charges if they let him stay. The tenant testified that this conversation never took place. It is worth noting that in the audio tapes that tenant does state several times that illegal entry is a criminal offence.

The tenant did go the RCMP after the taped conversation with the landlords. He said he went after he had a recording of the landlord admitting that he had entered the rental unit. The tenant testified that he did not expect the RCMP to charge the landlord with a criminal offence. He said they told him they would talk to the landlord without actually charging him.

The RCMP did come and talk to the landlord. The landlord says this conversation took place later on the same day the tenant threatened to charge him with break and entry. They told the landlord that they had received a complaint from the tenant about possible breaking and entry and while no charges were being laid he was being advised that he was not allowed to enter the rental unit without the tenant's permission.

It is common ground that there is no evidence of the landlord entering the rental unit without the tenant's permission after June 24, 2015.

Shortly after this conversation with the police the landlords told the tenant they were not proceeding with the request contained in their June 21st letter and they were prepared to allow the tenancy to continue.

The ensuing months have been very unhappy.

A constant source of friction has been parking. The tenancy agreement does not say anything about parking. The parties gave different testimony about the conversations and agreements at the start of the tenancy. The landlords say they showed the tenant the one space on the shared driveway that was set aside for tenant parking. They knew he had more than one vehicle but he told them he was going to sell one.

The tenant says that when he rented this unit he had a car, a VW camper van, a utility trailer, and a motorcycle and the landlords were well aware of this fact when they agreed to rent to him.

After a few months he sold the camper van. The tenant testified that he subsequently replaced the camper van with a truck and a truck camper. He replaced his utility for another one of similar size and he bought a canoe. The landlords allege that he bought all of these items after the dispute in June as a means of harassing and intimidating them. The tenant denies these allegations and says he is just replacing camping gear that he already had. In addition to the motorcycle, canoe and motor vehicles the tenant also owns three specialized, expensive bicycles.

The tenant testified that part of their agreement was the use of a small shed where he keeps his welding and other tools. It is too small for the motorcycle or the bicycles. The first winter of this tenancy the landlord suggested that the tenant could keep his motor cycle in the covered car port and the bicycles in the main floor sunroom. The landlords are upset that this winter that the tenant put his motorcycle in the carport and the bicycles in the sunroom without asking their permission in advance. The tenant's position is that this is what they had agreed to.

This summer the landlord built a planter that divides the driveway. The landlord says he built it after the police came to see him and the purpose of the planter is to clearly separate the tenant's parking area from the landlord's parking area. The tenant says the result of this construction is to make it impossible to fit in the various vehicles into the space that used to be adequate for all of them.

The tenant has called the police on two occasions since June. Once when he found that the valve covers on two of his tires had been removed and the tires flattened. The second occasion was when he observed several scratches on the mirror of his car. He testified that he observed the landlord on more than one occasion maneuver his motor vehicle while backing out of the driveway to deliberately clip his car. The landlord denied this allegation. The tenant testified that he videotaped the second occasion on which this occurred and provided the video to the RCMP. Both parties testified that the police had not taken any action on this complaint.

Both parties gave a lot of evidence about the placement of various vehicles in the driveway and how their actions did or did not obstruct the other. The tenant's position is that parking was not an issue until he called out the landlords for the unlawful entry. The landlords' position is that the tenant has added all these vehicles after they asked him to leave as a means of harassing them.

On September 21 the landlords issued and served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use in the proper form. The tenant filed this application for dispute resolution on September 22. The tenant has continued to pay the rent and the landlords have provided him with a receipt that says the rent is being accepted for use and occupancy only for each payment.

The tenant argues that the real reason the landlords have served him with this notice is because of their unhappiness with the parking situation and that the third conversation he taped is evidence of that. In that conversation the tenant complains to the landlord about harassment and the landlords complain about the negative effect the ongoing stress was having on their health. Once again the parties argue about the landlord's entry and the property interpretation of the tenancy agreement as well as the parking issues.

The landlords say that their changing health and their changed financial situation is why they want the use of the entire house for their own purposes. The tenant questions the landlords' testimony about deteriorating health and gave some examples of the landlords' physical abilities, some of which date back to earlier in the tenancy. The landlords' response is that they cannot do many of the things they did a year ago.

The tenant testified that he has been looking for another place but he cannot find one for the same rent. He testified that he is strapped financially and cannot afford to move at this time.

Analysis

Section 49(3) of the *Residential Tenancy Act* allows a landlord who is an individual to end a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Section 52 provides that in order to be effective a notice to end a tenancy given by a landlord must, among other things, be in the approved form. The letter dated June 24, 2014, was not in the approved form and therefore was not a valid notice to end tenancy. The document dated September 21, 2015 and served on the tenant on September 21 is in the proper form.

As explained in *Residential Tenancy Policy Guideline 2: Good Faith Requirement When Ending a Tenancy* if the 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 arbitrator 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 end the tenancy.

The statute does not say the rental unit must be the sole living accommodation of the landlord, only that they intend to occupy it. The statute does not define "occupy" but a dictionary definition includes: "to take and maintain possession of (e.g. land or building): and "to reside in or use (a building) as an owner or a tenant." I find that enlarging the space that the landlords use for their own purposes is "occupying" the rental unit.

The landlords' plan for use of the rental unit is a common plan for people of their age and financial situation. There is no evidence of any substantial conflict between the landlords and the tenant before the

argument in June. The evidence is that the landlords had taken the first steps to applying for financial assistance to replace the rental income and had learned that their pension income was substantially increased before that argument. Based on this sequence of events I am satisfied that the landlords did not have any ulterior motive for wanting to give notice to end tenancy in June.

Based on the evidence submitted by the tenant I am satisfied that he did his best to intimidate the landlords into allowing the tenancy to continue. They succumbed to this pressure and told him the tenancy would continue.

The landlords had second thoughts about this decision. What caused these doubts is not established by the evidence, but in the meantime their physical requirements did not lessen , their age did not decrease, and their plan for the rental unit did not change. All that changed was their willingness to wait until the tenant finished law school before implementing their plan. I find that events of the summer of 2014 did not change the landlords' motive for wanting to end this tenancy; only their willingness to wait until the timing suited the tenant.

Accordingly, I find that the 2 Month Notice to End Tenancy for Landlord's Use dated September 21, 2015 is valid and I dismiss the tenant's application for an order setting it aside.

Section 55(1) of the *Residential Tenancy Act* provides that if a tenant makes an application to set aside a landlord's notice to end a tenancy and the application is dismissed, the arbitrator must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing, the landlord makes an oral request for an order of possession.

The landlord did make an oral request for an order of possession. The tenant will have paid the rent for January. Pursuant to section 51(1) a tenant who receives a 2 Month Notice to End Tenancy is entitled to receive one month rent free. The tenant will have paid the rent for January and will not receive this decision until after mid-month. In light of these circumstances I order, pursuant to section 68(2), that this tenancy will end on February 28, 2016 and the landlords will be granted an order of possession for that date. Pursuant to section 51(1) the tenant is not required to pay any rent for February.

As the tenancy orders regarding access and locks are moot. They are dismissed.

Conclusion

The tenant's application is dismissed in its' entirety. The landlords have been granted an order of possession effective February 28, 2015. If necessary, this 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: January 11, 2016

Residential Tenancy Branch