



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNL, RR, FF
OPL

Introduction

This hearing was scheduled in response to the tenant's application for cancellation of a landlord's notice to end tenancy for landlord's use of property / a reduction in rent for repairs, services or facilities agreed upon but not provided / and recovery of the filing fee. Both parties attended and gave affirmed testimony.

During the hearing the landlord confirmed that an order of possession is sought in the event that the tenant's application for cancellation of the notice to end tenancy does not succeed.

Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

The unit which is the subject of this dispute comprises the upper level of a 2 storey house, where other renters occupy the lower level of the house.

Pursuant to the first written tenancy agreement, tenancy began on August 01, 2013. Pursuant to a second written tenancy agreement the term of tenancy is from August 01, 2014 to August 31, 2015. Following the inability of the parties to agree to the terms of a third written tenancy agreement proposed by the landlord, a copy of which is in evidence before me as a "draft," the fixed term tenancy ending August 31, 2015 became a month-to-month tenancy. The disagreement around the "draft" tenancy agreement concerns the tenant's disagreement with the landlord's proposal to increase monthly rent by \$100.00 to \$1,400.00. Presently, monthly rent remains at \$1,300.00, and it is due and payable in advance on the first day of each month. A security deposit of \$650.00 was collected on or about August 01, 2013.

Pursuant to section 49 of the Act which addresses **Landlord's notice: landlord's use of property**, the landlord issued a 2 month notice to end tenancy dated October 30, 2015. The notice was served by way of posting to the unit door on that same date. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenant must vacate the unit is January 31, 2016. The reason identified on the notice in support of its issuance is as follows:

The landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant.

The tenant filed an online application to dispute the notice on November 04, 2015, and she presently continues to reside in the unit.

The landlord takes the position that the unit must be vacant in order that "a major structural renovation of the upstairs" may be completed. However, the tenant states that certain renovations have been ongoing at the house since her tenancy began. The tenant also considers that the new work proposed is such that the unit does not need to be vacant, and that she can continue to reside there while the work is underway. In the alternative, the tenant considers that she could relocate temporarily and pay the landlord a reduced amount of rent for storage of many of her possessions which would remain in the unit during the renovation. While a resolution of the dispute was explored by the parties during the hearing, no mutually agreeable solution was achieved.

Analysis

Based on the documentary evidence and testimony, I find that the tenant was served with a 2 month notice to end tenancy for landlord's use of property dated October 30, 2015. I find that the tenant's application to dispute the notice which was filed on November 04, 2015, was filed within the 15 day period available for doing so after the date of service.

Section 49 of the Act [**Landlord's notice: landlord's use of property**] provides in part:

49(6) A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:

(b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant;

Further, Residential Tenancy Policy Guideline # 2 speaks to the “Good Faith Requirement when Ending a Tenancy,” and provides in part:

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.

In his written submission the landlord describes himself as a “semi-retired building contractor.” Further, the landlord sets out his intention to “rebuild the upper front (east) wall of the house.” The landlord claims the unit must be vacant during this renovation for reasons related to “safety and health; security and liability; timing and scheduling.” While the landlord has speculated that the work may take “at least six weeks to complete,” he has also stated that he is “not sure how long this work will actually take.”

Documentary evidence submitted by the landlord includes copies of the work permit, architect’s drawings, engineer’s drawings and a budget. While it is clear that the landlord would prefer to end the tenancy, I find that the landlord has failed to meet the burden of proving that the unit must be vacant while the proposed renovation is undertaken. There is, for example, no evidence of an opinion from a qualified third party which supports the landlord’s view that the “front of the house had limited structural integrity,” and / or that the unit must be vacant while the proposed renovation takes place. Additionally, in light of the dispute between the parties around the landlord’s proposed rent increase following the end of the second fixed term tenancy, there is some question as to the good faith intent of the landlord in issuing the notice to end tenancy. In the result, the notice to end tenancy is hereby set aside, and the tenancy presently continues in full force and effect.

As the tenant has succeeded in her application to have the notice to end tenancy set aside, I find that she has also established entitlement to recovery of the \$50.00 filing

fee. I order that the tenant may withhold this amount from the next regular payment of monthly rent.

As to the tenant's application for a reduction in rent for repairs, services or facilities agreed upon but not provided, it is dismissed with leave to reapply, as it is an outcome sought in association with her proposal to resolve the dispute by paying a reduced amount of rent, while temporarily vacating the unit and leaving certain possessions behind in storage. Currently, no such temporary relocation has taken place.

Conclusion

The landlord's notice to end tenancy is hereby set aside, and the tenancy continues uninterrupted.

The tenant is ordered that she may withhold \$50.00 from the next regular payment of monthly rent in order to recover the filing fee.

The tenant's application for a reduction in rent is hereby dismissed with leave to reapply.

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

