



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, MNSD, FF

Introduction

This hearing was scheduled to deal with a tenant's application to cancel a *2 Month Notice to End Tenancy for Landlord's Use of Property*; orders for the landlord to comply with the Act, regulations or tenancy agreement; and return of the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and Procedural Matters

In filing this application, the tenant had requested return of the security deposit; however, I found that request premature since the tenancy is still in effect at this time. The tenant's request for return of the security deposit is dismissed with leave to reapply.

From the tenant's written submissions, it also appeared as though the tenant was attempting to increase his monetary claim to include a request for return of his last month's rent. The tenant did not amend his application in a manner that complies with the requirements of the Rule 4 of the Rules of Procedure. I also informed the parties of the time constraints of the hearing and that Rule 2.3 of the Rules of Procedure provide that I may sever multiple issues contained in a single application where the issues are not sufficiently related. Both parties confirmed that the enforceability of the 2 Month Notice was the primary issue to resolve during this proceeding. Therefore, I have dealt with the 2 Month Notice by way of this decision and I have dismissed the other matters raised by the tenant with leave to reapply.

The tenant's evidence included a compact disc with an audio recording. Such evidence is referred to as digital evidence under the Rules of Procedure and certain steps are required where a party intends to rely upon digital evidence. The landlord acknowledged that she was able to open the file on the compact disc and listen to

content although she pointed out that there are muffled parts and that it sounds as though some parts cut off. The tenant agreed that the recording is muffled in parts and explained that he turn the recording off and on again. The landlord also stated that she was unaware that she did not give her permission to be recorded.

Issue(s) to be Decided

Should the 2 Month Notice to End Tenancy for Landlord's Use of Property be upheld or cancelled?

Background and Evidence

An oral tenancy agreement formed between the tenant and the owner of the property in 2011. The tenancy was to start April 1, 2011 on a month to month basis although the tenant was provided early possession at the end of March 2011. When the tenancy formed the parties agreed that the monthly rent of \$700.00 was to be paid on the first day of every month. The tenant paid a security deposit of \$200.00.

The rental unit is a one bedroom basement suite with an exterior entrance and a locked interior door that adjoins the rental unit to the main part of the house. There is also a two bedroom basement suite in the house. The owner of the property had lived in the main unit up until 2012 when she moved to another house nearby and the owner's agent and daughter (herein referred to as BK) moved into the main unit. BK lives in the main unit with her husband and daughter.

On December 26, 2015 BK posted a *2 Month Notice to End Tenancy for Landlord's Use of Property* (the Notice) to the tenant's door. The Notice is signed by both the owner of the property and BK. The Notice indicates the reason for ending the tenancy is that "*The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, child) of the landlord or the landlord's spouse*". The Notice has an effective date of February 29, 2015. The tenant filed to dispute the Notice within the time limit for doing so.

Although I heard a considerable amount of oral testimony, and I was provided written submissions from both parties, with respect to reasons the Notice was issued I have only summarized the parties' respective positions below with a view to brevity.

Landlord's Position

BK, who is the daughter of the owner, will be occupying the rental unit. She stated that her intention is to use the bedroom of the rental unit as her secure office space. BK submitted that she is a doctoral candidate and that she has or will have confidential data that she must maintain in a private and secure area given the nature of her research. Currently, BK has approximately 30 boxes of documents in storage in the unheated garage and that she must have sufficient and adequate space to access the data, conduct the research and prepare a dissertation. As a result, this will require BK to set up locking file cabinets and set aside secure space to store and access research books, materials and articles. BK submitted that there is insufficient space for in the main unit for this and that the dissertation is due in mid-2017. Even after the dissertation is complete, BK intends to use the space for a home-office. BK provided a letter from the supervising professor with the University where BK is a doctoral candidate. In the letter, the supervising professor confirmed that in September 2015 BK passed a research proposal and that as doctoral candidate BK will soon be collecting confidential data for her research study that will require her to safeguard the data and analysis.

In addition to BK using the rental unit for office space, I heard that BK's husband will also be using the living area of the rental unit as his home office. BK's husband is an incorporated realtor and his agency does not have sufficient space to provide him with a private office. The managing broker of a real estate agency also wrote a letter confirming BK's husband is a realtor and is in need of office space that is unavailable at the agency.

BK further submitted that the rental unit has traditionally been used for extra space and study space by the landlord's family, as needed over the years; however, this tenancy has been the longest tenancy for this unit and since there is a tenancy in place it has to be ended to accommodate the landlord's needs for the space.

Tenant's position

The tenant is of the position that BK has a bad faith intention to end the tenancy. The tenant submitted that he and BK do not get along and that they have been in conflict in the past concerning the payment of rent. The tenant submitted that he has paid rent late on a few occasions but that when he dealt with the owner it did not appear to be a problem. Given the acrimonious nature of his relationship with BK the tenant tried paying rent to the owner or the owner's son which made BK angry. On December 1, 2015 BK had given him a letter about paying rent. The tenant suggested that BK has over-stepped her authority to demand payment in cash without giving him a receipt immediately and has denied him the ability to pay by e-transfer. Then on December 2, 2015 there was an argument between the two of them that started in the driveway and

this altercation is what is contained on the audio recording. The tenant stated he started recording the interaction because BK was acting aggressively toward him.

The tenant also questioned why the landlord does not use the other basement suite for the landlord's need for more space. The tenant initially submitted that the two basement suites are identical; however, the tenant later conceded that the other basement suite has a second bedroom.

Landlord's response

The landlord's agent agreed that collecting rent from the tenant when it is due has been challenging throughout the tenancy. While the owner may not have enforced the issue BK has issued the tenant with 10 Day Notices to End Tenancy for Unpaid Rent (RTB-30) since she has been managing the property in an effort to convey that rent is to be paid on the first day of the month.

The landlord was of the position that the tenancy is not being ended due to repeated late payment of rent as there is a remedy for that under the Act and other previous issues have been addressed with the tenant as appropriate at the time. Ultimately, BK maintained that the landlord is not motivated to end the tenancy due to late payment of rent or a dislike for the tenant but that the landlord is motivated to end this tenancy so that the landlord's close family member may use the space.

As to the timing of the Notice, BK submitted that after passing her research project in September 2015 BK anticipated that the tenancy would be ending soon; however, the landlord did not want to end the tenancy at the end of December 2015 since it is more difficult for tenants to move at that time. Further, giving the Notice with the effective date of February 29, 2016 gives BK about a month to physically set up her office space before data collection and analysis begins.

As to the other basement suite, BN submitted that not only is the other suite a two bedroom but that the tenants occupying that suite have a lease as opposed to a month to month tenancy. Further, the landlord maintained that the other suite is larger in other areas and is more space than is needed for BK.

Tenant's response

The tenant maintained that the timing of the altercation on December 2, 2015 and then receiving a 2 Month Notice later on December 26, 2015 appears suspect and the tenant

maintains that the landlord has a bad faith intention to end the tenancy. The tenant also pointed out that he pays relatively low rent and that he is faced with paying much more for living accommodation should this tenancy end.

Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, based on a balance of probabilities, that the tenancy should end for the reason indicated on the Notice.

The reason indicated on the Notice is a pared down version of what is provided under the Act. I must be satisfied that the criteria of the Act are met. Accordingly, I have provided the relevant portions of the Act below.

The reason indicated on the Notice corresponds to section 49(3) of the Act which permits a tenancy to be ended where:

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

“Close family member” is defined in subsection (1) to mean

Close family member means, in relation to an individual,

- (a) the individual's parent, spouse or child, or
- (b) the parent or child of that individual's spouse;

“Landlord” is defined in subsection (1) to mean an individual with no less than $\frac{1}{2}$ of a reversionary interest in the property. In this case, I was not provided any evidence to suggest the landlord hold less than such an interest in the property. Accordingly, I find that the “individual” referred to under the definition of “landlord” and “close family member” is the landlord named in this application (referred to by initials SK) as she is the owner, presumably with at least $\frac{1}{2}$ of a reversionary interest in the property. In keeping with the definitions provided above, a close family member SK would be the SK’s child, meaning BK is a close family member of SK. However, I find that BK’s husband does not meet the definition of close family member under the Act.

It is important to note that section 49(3) does not require the landlord or close family member intend to live or reside in the rental unit after the tenancy ends. Rather, the

word used is “occupy”. The Act does not define the term “occupy” and I have relied upon the meaning as provided in Black’s Law Dictionary which is: “To hold in possession; to hold or keep for use.”

Based on this definition a of “occupy”, I find that using the rental unit space for office space and/or storage by the landlord or close family member of the landlord meets the requirement “to occupy”.

Where a landlord seeks to end the tenancy so that the landlord or close family member may occupy the rental unit, section 49 of the Act also requires that the landlord intends to end the tenancy in good faith. The Act does not specifically define “good faith”; however, Residential Tenancy Policy Guideline 2: *Good faith requirement* provides policy statements with respect to the good faith requirement. The policy guideline provides, in part:

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. This might be documented through:

- a Notice to End Tenancy at another rental unit;
- an agreement for sale and the purchaser’s written request for the seller to issue a Notice to End Tenancy; or
- a local government document allowing a change to the rental unit (e.g., building permit) and a contract for the work.

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.

Upon consideration of everything before me, I find the landlord's agent provided a reasonable and likely explanation as to reason BK wishes to use the rental unit and provided documentary evidence, namely the letter from the supervising professor at the University, to support that reason. Accordingly, I am satisfied that BK truly intends to occupy the rental unit so as to accommodate her need for space and security to gather, analyze data and complete her dissertation. I have not given further consideration to use of the space by BK's husband as he does not meet the definition of close family member; however, BK remains at liberty to allow her husband to use other areas of the rental unit she does not require for her purposes.

The only remaining issue to determine is whether the landlord has a good faith intention to end the tenancy and I have given this matter careful consideration. While there has been conflict between BK and the tenant concerning her status as agent for the landlord and late payment of rent I find am unpersuaded that BK intends to end the tenancy due to these issues since those issues are rather easily rectified and do not require a 2 Month Notice. I make this finding considering the following factors:

- An owner of a rental property has the right to appoint an agent to act on their behalf and that agent has all of the same powers as a landlord under the Act since the definition of a landlord under section 1 defines landlord to include an agent of the owner. BK's standing as agent for the owner is easily accomplished by way of a letter from SK and I note that the owner has signed a number of documents indicating BK is her agent for this property.
- The Act provides a landlord the ability to end a tenancy for repeated late payment of rent by issuing a 1 Month Notice to End Tenancy for Cause. Such a Notice provides the tenant with only one month of notice and no compensation. In contrast, the landlord in this case has given the tenant two months of notice and compensation. Also, by giving a 2 Month Notice the landlord is precluded from re-renting the unit for at least six months after the tenancy ends. Thus, giving a tenant a 2 Month Notice is much more costly to the landlord than using a 1 Month Notice.

Finally, I listened to the audio recorded provided by the tenant out of an abundance of fairness to the tenant. After listening to the recording, I find that, if anything, it supports the landlord's version of events as to what transpired on December 2, 2015. I noted that it was the tenant who sounded aggressive and hostile yet he was accusing BK of

being a “bully”; whereas, I noted that BK conducted herself as professionally as possible given the tenant’s conduct.

In light of all of the above, I find the landlord’s has satisfied me that the landlord’s close family member intends to occupy the rental unit in good faith and I uphold the Notice with the effect that this tenancy will end on the effective date of February 29, 2016.

Pursuant to section 55(1) of the Act, I provide the landlord with an Order of Possession effective February 29, 2016 to serve and enforce upon the tenant.

During the hearing I heard that the tenant has withheld rent for February 2016. Since the Notice has been upheld the rent he withheld forms the compensation he is entitled to receive under section 51(1) of the Act. Accordingly, there is no rent outstanding and the tenant has been compensated under section 51(1).

Conclusion

The 2 month Notice is upheld and this tenancy shall end on February 29, 2016. The landlord is provided an Order of Possession with this effective date to serve and enforce if necessary.

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: February 19, 2016

Residential Tenancy Branch

