



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

Both parties attended the hearing. The Notice to End Tenancy is dated January 31, 2016 to be effective March, 2016 and the tenant confirmed it was served by posting it on her door. Since it was posted on the door, it is deemed to be received 3 days later which would be February 3, 2016. Therefore, the effective date on the Notice is automatically corrected to April 30, 2016 pursuant to section 53 of the *Residential Tenancy Act* as a Notice to End Tenancy for landlord's use of the property must give a full two months' notice and end the tenancy on the day before the day in the month that rent is payable under the tenancy agreement according to section 45 (1) (b). The tenant /applicant gave evidence that they served the Application for Dispute Resolution on February 11, 2016 by registered mail and the landlord agreed they received it. I find the documents were legally served for the purposes of this hearing.

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To cancel a notice to end tenancy for landlord's use of the property pursuant to section 49 as the notice was incomplete;
- b) An Order that the landlord comply with the Act and do repairs and not enter the unit contrary to section 29; and
- c) To recover compensation of one year's rent for loss of peaceful enjoyment contrary to section 28 of the Act.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that they have sold the unit and the buyer requires vacant possession or is the tenant entitled to any relief? Is the landlord entitled to an Order of Possession if the tenant is unsuccessful in the application?

Has the tenant proved on the balance of probabilities they are entitled to compensation for the landlord's interference with, and failure to protect, their peaceful enjoyment contrary to section 28 of the Act. Are they entitled to an order to repair and that the landlord obey the provisions of section 29 of the Act and cease illegal entry of their suite? If so, to how much compensation are they entitled?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced in August 2011, rent is \$750 a month and a security deposit of \$375 was paid in August 2011. The landlord served a Notice to End Tenancy as he has sold the home and the buyer requires vacant possession.

The tenant said she never received the second page of the Notice to End Tenancy on which the reasons are stated for ending the tenancy. The landlord said he sent it to the Residential Tenancy Branch and also gave the tenant the complete copy. The Branch received his copy of the Purchase and Sale Agreement but no copy of the Notice to End Tenancy. The tenant submitted the one page of the Notice that she states she received. She also said she never got the copy of the evidence of the Purchase and Sale Agreement. When it was evident that the landlord was having difficulty in proving service of the documents, he had his brother join the conference (although he said he had no witnesses at the commencement of the conference). His brother said, "I gave her everything" but he had difficulty describing what exactly he "gave" her. In the background, I could also hear the landlord continually prompting him on what to say. The advocate for the tenant also noted this.

The tenant also requests an Order that the landlord repair the lock to her door. She said the landlord with a realtor and other unknown persons had attempted to enter the premises without any notice on January 16, 2016. When she refused entry, they tried to break down the door with a hammer and broke the lock. She called the Police who made the landlord install an old lock on the door but she says it is not a sufficient lock, there is a gap and it is unsafe.

The tenant also requests a rent refund of 12 months rent as she states the landlord has continually interfered with her and her family's peaceful enjoyment. She said they had good relations until she telephoned the Police on May 28, 2014 alleging the landlord was assaulting his wife. He was charged and since then, she has been continually harassed by him attempting to end her tenancy. They have had 5 hearings in which the tenant has been successful at having Notices set aside. In September 2014, a Decision set aside a Notice to End Tenancy for cause, in November 2014, a Decision set aside a Notice to End Tenancy for landlord's use of the property, in December 2014, a Decision ordered repairs and \$200 compensation for loss of services, and in January 2016, the landlord was found to have not provided sufficient notice of entry. The landlord applied for Review but was unsuccessful and then applied for Judicial Review which was due to be heard on March 24, 2016 but for some reason was withdrawn.

The tenant says if this Notice to End Tenancy is set aside, she wishes to remain in the property and understands that her tenancy continues even when the property is sold with the purchasers becoming her new landlords.

Included with the evidence is the Purchase and Sale Agreement with the buyer requesting vacant possession, a first page of a Notice to End Tenancy, a note from the landlord saying the tenant broke the lock and she should fix it and partial copies of previous decisions. On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

Analysis:

As discussed with the parties in the hearing, the onus is on the landlord to prove on a balance of probabilities that they have good cause to evict the tenant and that they served the requisite Notice to End Tenancy pursuant to section 49 of the Act. I find the evidence of the tenant credible and I prefer it to the evidence of the landlord in respect to the incomplete Notice. The landlord said he sent a complete Notice to the Branch but it was not received. Furthermore, I heard evidence of him prompting a witness on the telephone to repeat facts and events that the witness did not appear to know. Section 52 of the Act requires that a landlord serve Notices in the approved forms. I find the weight of the evidence is that the landlord served a defective Notice to End Tenancy that had only the first page without the reasons as set out on the second page. I hereby cancel the Notice to End Tenancy dated January 31, 2016 as it was defective. Her tenancy is continued under the new owner of the home if necessary.

I found the tenant's evidence credible in respect to the breaking of the lock on January 16, 2016. I found her account to be detailed and persuasive as she had to get the Police involved to force the landlord to secure her door again with an old lock. I order the landlord to make her door secure by putting on a new lock and doing any other repairs to the door necessary to make it secure. I order that the landlord cease entering the tenant's unit illegally and that they conform to section 29 of the Act and give proper Notice to Enter. I note that this section and Notice was explained in the Decision issued January 6, 2016 and I advise the landlord to re-read the Decision and consider it.

I find the weight of the evidence is that the landlord has significantly interfered with, and unreasonably disturbed the tenant's peaceful enjoyment since an incident in 2014. The evidence of the several unsuccessful attempts to end her tenancy and disruption of her services (for which she received an award) , and the attempt to break down her door in 2016 in order for a realtor or other persons to enter supports her allegations of unreasonable interference and significant disruption of her peaceful enjoyment by the

landlord. Although she requests a rent refund for a year, I find this is somewhat unreasonable as she and her family of four have had a 'lovely convenient home' as she testified to live in. I find the weight of the evidence is that they have been significantly disturbed by five Applications of the landlord plus the forcible entry. I find it reasonable to award a rent refund of one month for each of these events or six months in total. The total rent refund awarded is \$4500 (\$750 x 6).

Conclusion:

The Application of the Tenant to set aside the Notice to End Tenancy is successful. No filing fee was involved. I find the tenant entitled to a monetary order for \$4500 which may be enforced against the present landlord or deducted from her rent to him.

I HEREBY ORDER that the landlord make her door secure by putting on a new lock forthwith and doing any other repairs to the door necessary to make it secure.

I HEREBY ORDER that the landlord cease entering the tenant's unit illegally and that he provide proper Notice to Enter pursuant to section 29 of the Act.

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: March 30, 2016

Residential Tenancy Branch