



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNL, MT, O

Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution in which the Tenant applied for more time to cancel a Notice to End Tenancy, and for "other". The Tenant subsequently amended the Application for Dispute Resolution to include an application to set aside a Two Month Notice to End Tenancy for Landlord's Use of Property.

The Tenant stated that she served the Application for Dispute Resolution to the Landlord, via registered mail, although she cannot recall the date of service nor can she recall whether she served the original or the amended Application for Dispute Resolution. The Landlord stated that she received the amended Application for Dispute Resolution sometime during the third week of March of 2016.

On March 09, 2016 the Tenant submitted 20 pages of evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was mailed to the Landlord; although she cannot recall the date it was mailed. The Landlord acknowledged receipt of this evidence and it was accepted as evidence for these proceedings.

On April 01, 2016 the Tenant submitted an additional 19 pages of evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was mailed to the Landlord, via registered mail, on April 01, 2016. The Tenant submitted a Canada Post receipt that corroborates this statement. I therefore find that the Tenant served this evidence package to the Landlord in accordance with section 88 of the *Residential Tenancy Act (Act)*.

The Landlord stated that she did not receive this evidence package.

The Tenant was advised that she may refer to the documents she submitted to the Residential Tenancy Branch on April 01, 2016 and that if, during the hearing, she believes I need to view this evidence she may request an adjournment for the purposes of re-serving this evidence.

In her final submission the Tenant stated that she would like an adjournment for the purposes of re-serving the evidence she mailed to the Landlord on April 01, 2016. She stated that she feels she is entitled to have her submission considered prior to a decision being rendered in this matter.

The Landlord was opposed the application for an adjournment on the basis her daughter wishes to move into the rental unit as soon as it is vacant.

As I have concluded that the evidence submitted by the Tenant on April 01, 2016 was served to the Landlord in accordance with the *Act*, I concur with the Tenant's submission that she has the right to have that submission viewed prior to a decision being rendered. I note that the submission is lengthy and there was insufficient time for the Tenant to read the entire submission during the hearing.

The parties were advised that I was granting an adjournment as I am unable to determine why the Landlord did not receive the evidence that was mailed to her on April 01, 2016. In the absence of evidence to the contrary, I find that it is possible that the evidence was improperly delivered by Canada Post.

Upon being advised that an adjournment was being granted the Landlord stated that she does not object to me viewing the evidence package she did not receive and that she does not need to see the written submission of the Tenant. The Landlord clarified on three occasions that she was agreeing to forfeit her right to view this evidence and that she understood the evidence would be considered in this adjudication. As the Landlord has agreed to allow the evidence to be considered without having the opportunity to see it, I determined that an adjournment was not necessary.

The Landlord stated that she did not serve any evidence for this hearing.

The parties were provided with the opportunity to present relevant oral evidence, to ask relevant questions, to call witnesses, and to make relevant submissions.

Issue(s) to be Decided

Should the Tenant be granted more time to apply to cancel a Notice to End Tenancy?
Should the Two Month Notice to End Tenancy for Landlord's Use of Property be set aside?

Background and Evidence

The Landlord and the Tenant agree that:

- this tenancy began on February 01, 2015;
- the Tenant occupies a cabin on the residential property; and
- the Landlord also has a residence on the residential property, which she does not currently occupy on a full time basis.

The Landlord stated that on February 19, 2016 she served a Two Month Notice to End Tenancy for Landlord's Use of Property to the Tenant, via registered mail. The Tenant stated that she received this Notice in the mail on February 23, 2016 or February 24, 2016.

The Landlord and the Tenant agree that the Two Month Notice to End Tenancy that is the subject of this dispute is dated February 19, 2015; the Notice declared that the Tenant must vacate the rental unit by May 01, 2016; and the Notice declared that the rental unit will be occupied by the landlord or the landlord's spouse or a close family member of the landlord or the landlord's spouse. The Landlord stated that the Notice to End Tenancy was inadvertently dated February 19, 2015, rather than February 19, 2016.

The Landlord stated that the Two Month Notice to End Tenancy was served to the Tenant because her daughter is moving to the community and intends to occupy the rental unit. The Landlord submitted no documentary evidence from her daughter that indicates she intends to occupy the rental unit. The Landlord attempted to call her daughter as a witness but nobody answered the telephone when I dialed the telephone number provided by the Landlord.

The Tenant stated that she does not know the Tenant's daughter so she cannot know if the daughter really intends to move into her unit.

The Tenant states that she does not believe this Two Month Notice to End Tenancy was served in good faith.

The Tenant stated that she believes the Notice to End Tenancy was not served in good faith, in part, because shortly after this tenancy began the Tenant asked the Landlord to fix the skylight, which made the Landlord angry. She stated that the Landlord informed her that the tenancy "wasn't working for her" and she attempted to convince the Tenant to end the tenancy.

The Landlord agrees that prior to the start of the tenancy she promised to fix the skylight and that she did have the skylight fixed in May of 2015. She stated that the Tenant made several complaints about how dark the cabin was and she did tell the Tenant that she could end the tenancy if the unit was not suitable.

The Tenant stated that she believes the Notice to End Tenancy was not served in good faith, in part, because in May of 2015 the Landlord came inside the rental unit to take photographs and became angry about the condition of the rental unit. The Tenant had significant difficulty explaining what the Landlord was upset about but she eventually stated it was because the Landlord believed the Tenant was storing a large amount of property in the unit.

The Landlord stated that in May of 2015 she was inside the rental unit for the sole purpose of photographing the repairs to the skylight; that she was not angry; and she had no concerns about the condition of the rental unit or property being stored inside the rental unit.

The Tenant stated that she believes the Notice to End Tenancy was not served in good faith, in part, because the Landlord has served her with two previous notices to end tenancy, which were set aside at previous dispute resolution hearings. The Tenant submits that this is evidence that the Landlord is creating reasons for ending the tenancy and she believes the Landlord has not acted in good faith when she served any of the Notices to End Tenancy, including the Notice that is the subject of these proceedings.

The Landlord and the Tenant agree that sometime in 2015 the Landlord served the Tenant with a Two Month Notice to End Tenancy, which the Tenant disputed. The Tenant provided the file number for these proceedings and both parties agreed that I could review that decision when adjudicating this matter. The file number for that matter appears on the first page of this decision.

In regards to the first Two Month Notice to End Tenancy that was served, Residential Tenancy Branch records show that:

- the Two Month Notice to End Tenancy was served on May 23, 2015;
- the Notice declared that the Landlord wished to end the tenancy because the rental unit will be occupied by the landlord or the landlord's spouse or a close family member of the landlord or the landlord's spouse;
- the Tenant disputed the Notice to End Tenancy;
- the Landlord testified that that her mortgage insurance broker advised her that several major repairs were required at the residence she typically occupied before mortgage insurance will be issued;
- the Landlord testified that she was ending the tenancy because she wished to live in the rental unit while repairs were being completed at the residence she typically occupied;
- the Tenant testified that she believed the Landlord was "lying" about her reasons for ending the tenancy;
- the Tenant's application for review was granted on the basis that the Tenant has new and relevant evidence that was not available at the time of the original hearing;
- the decision to grant a new hearing appears to be based on the Arbitrator's finding that the Tenant did not have prior knowledge that the Landlord was ending the tenancy on the basis of the Landlord's intent to complete work on the main house due to a notice from her mortgage insurance company;

- the Landlord testified she was required to replace the deck in order to reduce liability;
- the Landlord testified that the insurance company did not issue a written order for the deck to be replaced but she knew the work on the deck needed to be completed to show she was complying with insurance requirements by maintaining the property;
- the Tenant testified that the Landlord told her that the Landlord's family investors wanted the Landlord to reside in the Tenant's rental unit so they could rent out the upper level of the main house for a higher rental income.
- the Tenant stated that the Landlord did not tell her an honest reason as to why she was being evicted and that her reasons for ending the tenancy have changed from increased income, to deck repairs, to the mortgage repairs;
- the Landlord testified that when she was inside the rental unit taking pictures of the skylight she also took pictures of the Tenant's possessions; however, as she was concerned about the manner in which the Tenant's possessions were kept and that they may cause damage or a fire hazard; and
- after the second hearing the Arbitrator concluded that the Two Month Notice to End Tenancy had not been served in good faith, in large part because the Landlord's reasons for ending the tenancy were inconsistent; and
- after the second hearing the Arbitrator set aside the Two Month Notice to End Tenancy.

The Landlord and the Tenant agree that later in 2015 the Landlord served the Tenant with a One Month Notice to End Tenancy for Cause, which the Tenant disputed. The Tenant provided the file number for these proceedings and both parties agreed that I could review that decision when adjudicating this matter. The file number for that matter appears on the first page of this decision.

In regards to the One Month Notice to End Tenancy that was served, Residential Tenancy Branch records show that:

- the Landlord served the Tenant with a One Month Notice to End Tenancy on August 28, 2015;
- the Notice declared that the tenancy was ending because the unit must be vacated to comply with a government order;
- the Landlord received a letter from the municipality which "appears to be for information purposes";
- the Landlord did not receive an explicit directive or "order" with respect to the cabin/rental unit;
- the Arbitrator concluded that she was unable to determine whether the municipality requires the "decommissioning" of the cabin/rental unit, or whether other options are available to the Landlord; and
- the Arbitrator set aside this Notice to End Tenancy.

Both parties referred extensively to the previous hearings and were assured that I would refer to those decisions prior to rendering a decision in this matter. Much of that

evidence is not summarized in this decision as it was largely consistent with the information provided at the previous hearings.

I have reviewed all of the written submissions and evidence submitted by the Tenant, which essentially reiterates the issues in dispute at the previous hearings and alleges that the Landlord has a history of failing to maintain the residential property and of acting dishonestly in this, and other, tenancies.

Analysis

Section 49(8) of the *Act* stipulates that a tenant may dispute a Two Month Notice to End Tenancy for Landlord's Use of Property by filing an Application for Dispute Resolution within 15 days after receiving the Notice. As the Tenant is not certain whether she received the Two Month Notice to End Tenancy that is the subject of this dispute on February 23, 2016 or February 24, 2016, I find that she is deemed to have received the Notice to End Tenancy on February 24, 2016, pursuant to section 90(a) of the *Act*.

As the Tenant is deemed to have received the Two Month Notice to End Tenancy on February 24, 2016 and she filed her Application for Dispute Resolution on March 09, 2016, I find that the Tenant has filed the Application within the timelines established by section 49(8) of the *Act*. I therefore find that I do not need to consider the Tenant's application for more time to file an application to dispute the Notice to End Tenancy.

Section 49(3) of the *Act* authorizes a landlord to 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. When a landlord serves a tenant with a Notice to End Tenancy pursuant to section 49(3) of the *Act*, the landlord bears the burden of proving that there are grounds to end the tenancy.

I find that the Landlord has submitted no evidence to corroborate her testimony that her daughter intends to move to this community and reside in this rental unit. I specifically note that the Landlord did not submit any documentary evidence from her daughter nor was her daughter available to participate in the hearing by telephone. As the Landlord has submitted no corroborating evidence that shows her daughter intends to move into the rental unit, I find that the Landlord has failed to establish that she has grounds to end this tenancy pursuant to section 49(3) of the *Act*. I therefore grant the Tenant's application to set aside this Notice to End Tenancy.

Given that a previous Arbitrator has determined that the Landlord has not acted in good faith when she attempted to end this tenancy in 2015, I find it reasonable to expect evidence of grounds to end the tenancy that exceeds the testimony of the Landlord.

In determining that the tenancy should not end solely on the basis of the testimony of the Landlord I was influenced, to some degree, by the inconsistent testimony of the Landlord, which detracts from her credibility.

At the hearing on April 21, 2016 the Landlord declared that in May of 2015 she was inside the rental unit for the sole purpose of photographing the repairs to the skylight she had no concerns about the condition of the rental unit or that property was being stored inside the rental unit. This is in direct contrast to her testimony at a previous hearing, when she testified that when she was inside the rental unit taking pictures of the skylight she also took pictures of the Tenant's possessions because she was concerned about the manner in which the Tenant's possessions were kept and that they may cause damage or a fire hazard.

As the Landlord has submitted insufficient evidence to establish that her daughter intends to move into the rental unit, I find there is no reason to also determine whether the Notice to End Tenancy was served in good faith. The Landlord is cautioned, however, that her ability to prove good faith in the future may be impaired by these continued failed attempts to end the tenancy.

Conclusion

The Two Month Notice to End Tenancy for Landlord's Use of Property has been set aside. This tenancy will therefore continue until it is ended in accordance with the legislation.

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: April 22, 2016

Residential Tenancy Branch