



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNL, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel two notices to end tenancy.

The hearing was conducted via teleconference and was attended by the tenant; her assistant; her witness; the landlord and his witness.

I advised the parties at the start of the hearing that while the tenant had submitted several webpage addresses in their evidence I could not access them nor were they submitted in an acceptable format under the Residential Tenancy Branch Rules of Procedure such as a DVD or USB stick. I have not considered this digital evidence.

I note that Section 55 of the *Residential Tenancy Act (Act)* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

I also note that during the hearing the tenant confirmed that she would be willing to move out of the rental unit if the landlord would give her some additional time such as until the end of September 2016 to find new accommodation. As a result, I offered to negotiate a settlement agreement between the parties.

I informed both parties that if they could reach a mutual agreement as to the end date of the tenancy that I would issue the landlord an order of possession to ensure the tenancy would end on the date agreed upon. I also informed that parties that if they could not reach an agreement the hearing would continue and I would determine if the Notices were valid and enforceable.

I cautioned the landlord that should I find that the Notice were not enforceable that that tenancy would continue and the tenant would not be required to vacate the rental unit. The landlord kept saying that the tenant has move out of the property and that he has had it with her but he would not reach an agreement and chose for me to adjudicate the validity of the notices.

I also cautioned the tenant that should I find the either one of the Notices to be valid she would be required to vacate the property in accordance with the effective date of the specific Notice.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property; to cancel a 1 Month Notice to End Tenancy for Cause; and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 47, 49, 67, and 72 of the *Act*.

Should the tenant be unsuccessful in seeking to cancel either the 2 Month Notice to End Tenancy for Landlord's Use of Property or the 1 Month Notice to End Tenancy for Cause it must also be decided if the landlord is entitled to an order of possession pursuant to Section 55(1) of the *Act*.

Background and Evidence

The parties agreed the tenancy began in April 2008 for a current monthly rent of \$1,200.00 due on the 1st of each month with a security deposit of \$600.00 paid.

Both parties submitted the following relevant documents into evidence:

- A copy of a 2 Month Notice to End Tenancy for Landlord's Use of Property issued on May 9, 2016 with an effective vacancy date of July 31, 2016 citing the rental unit will be occupied by the landlord or the landlord's close family member; and
- A copy of a 1 Month Notice to End Tenancy for Cause issued on May 19, 2016 with an effective vacancy date of June 30, 2016 citing the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord and put the landlord's property at significant risk; the tenant has assigned or sublet the rental unit without landlord's written consent; and a security deposit or pet damage deposit had not been paid within 30 days as requested under the tenancy agreement.

The landlord submitted that he intends to move into the rental unit to use as his vacation and retirement home. He stated that he does not currently know when he will move in because he wants to do some work to the residential property to repair it from the condition it is currently in as a result of the tenancy. The landlord submitted that he has not yet set his retirement date.

The tenant submitted that this Notice was issued immediately after the landlord had shown up on the property on May 6, 2016 to cut down some trees and she got very upset by his insistence on cutting at least one specific shade tree she relied upon on her deck. The parties acknowledged that this interaction was difficult for everyone.

The landlord also seeks to end the tenancy for cause as noted in the 1 Month Notice.

The landlord submitted however, that in regard to the security deposit and pet damage deposit issue that the tenant did pay a security deposit at the start of the tenancy. He states that after he completed an inspection of the property he found the tenant has a pet that has caused significant damage to the property and so she has to vacate the property. He confirmed he did not request a pet damage deposit.

The landlord submitted that when they completed their inspection of the property on May 18, 2016 they were not allowed to enter into a locked bedroom by the tenant's agent who attended the inspection on her behalf. He stated that the agent responded that the landlord was not allowed in there because it belonged to the tenant's "tenant".

The tenant explained, in the hearing, that she has a close friend who will stay with her from time to time and that he does not pay rent but does look after the property when she is away for extended periods of time.

The landlord stated that during the course of the tenancy he had attempted to complete an inspection of the property on one other occasion (2014) but that when he arrived the tenant was not there and he did not enter into the unit. The tenant disagreed and stated that she had advised him she would not attend but that he could do the inspection in her absence. She believed that he had completed the inspection.

The landlord submitted that as a result of this inspection on May 18, 2016 he and his witness found the interior of the rental unit to be messy and unkempt. In his written submission the landlord stated that the kitchen counter and sink had bottles and dishes; the floor had clothes all over the place and that it smelled of dog urine; the place was “filthy and dirty I am sure there are mice and rats” and that the tenant has “habitually failed to maintain the property in a habitable state” [reproduced as written].

The tenant submitted that the landlord's niece had been taking pictures and they did not understand why the landlord did not submit any of these photographs as evidence. The landlord stated he was not aware his niece had taken any pictures.

The tenant also testified that the landlord also showed up on the property and posted several notices to end tenancy all around the house and even on her car windshield.

Analysis

Section 49 of the *Act* allows a landlord to end a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. Residential Tenancy Policy Guideline #2 defines “good faith” as 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.

The Guideline goes on to say that 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 the question as to whether the landlord had a dishonest purpose is raised.

When the good faith intent of the landlord is called into question, the burden rests with the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The Guideline requires the landlord to establish that they do not have another purpose that negates the honesty of intent or demonstrates they do not have an ulterior motive for ending the tenancy.

As the landlord issued this Notice immediately after the altercation of May 6, 2016 and the landlord's repeated testimony throughout the hearing that he was tired of the dealing with the tenant and she had to go I find the landlord has an additional intent on wanting to end the tenancy with this tenant.

Further, I am not satisfied that the landlord intends at any time in the near or immediate future to move in or occupy the rental unit for the purposes stated on the 2 Month Notice. As such, I order that the 2 Month Notice to End Tenancy for Cause issued on May 9, 2016 is cancelled and of no effect.

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- a) The tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement;
- b) The tenant or a person permitted on the residential property by the tenant has
 - i. Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - ii. Put the landlord's property at significant risk;
- c) The tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34;

From the testimony and evidence of the landlord I find that the tenant paid the security deposit at the start of the tenancy and the landlord did not at any time after the start of the tenancy request a pet damage deposit from the tenant. As such, I find the landlord cannot use the non-payment of a security deposit or pet damage deposit as a ground to end the tenancy.

Likewise, while the tenant may have a friend stay with her from time to time and on a regular basis the landlord has provided no evidence that the tenant has entered into any type of agreement with her friend to either sublet or assign the tenancy to this third party. As such, I find the landlord cannot rely on this as a ground to end the tenancy.

And finally in regard to the landlord's assertions that the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or put the landlord's property at significant risk I find the landlord has failed to provide any documentary evidence to substantiate his claims that the condition of the rental unit has left it such that the property is at any risk let alone a significant one or that the health, safety or lawful right or interest of the landlord is in jeopardy.

Furthermore, even if the landlord had established that the condition of the rental unit was such that it would warrant ending the tenancy I find that it would be unfair to end the tenancy at this time. I make this finding because the landlord has failed to inspect the property – or at least the interior of the house on the property – for the first 8 years of the tenancy.

Estoppel is a legal rule that prevents somebody from stating a position inconsistent with one previously stated, especially when the earlier representation has been relied upon by others. In these circumstances and until now by failing to inspect the property on a regular basis the landlord has, in essence, allowed the tenant to treat the rental unit in the manner she has and the landlord is estopped from ending the tenancy for these reasons.

As such, I find the landlord has failed to establish cause to end this tenancy and I order the 1 Month Notice to End Tenancy for Cause issued on May 19, 2019 is cancelled and of no effect.

I also note that while the landlord did not dispute that he had attend the property on May 26, 2016 and placed several more notices to end tenancy around the property I accept the tenant's

testimony that he did. I note that if any of these notices are related to the above two notices that I have just cancelled I order that all of these additional notices are cancelled.

Conclusion

Based on the above, I order the tenancy will remain in full force and effect and is not ended by any of the notices noted above.

I find the tenant is entitled to monetary compensation pursuant to Section 67 in the amount of **\$100.00** comprised of the fee paid by the tenant for this application. I order the tenant may deduct this amount from a future rent payment, pursuant to Section 72(2)(a),

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: June 23, 2016

Residential Tenancy Branch