



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNL, MNDC, ERP, RP, PSF, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking more time to cancel a notice to end tenancy; to cancel a notice to end tenancy; a monetary order; an order to have the landlord complete repairs and emergency repairs; and an order to compel the landlord to provide services or facilities.

The hearing was conducted via teleconference and was attended by the landlord; her agent; both occupants of the rental unit.

I note the tenant's Application for Dispute Resolution listed the male and female occupants of the rental unit. However, upon review of the tenancy agreement I find that only the male occupant is listed as a tenant and the agreement is signed only by the landlord and the male tenant. As such, I find the female occupant is not a party to this tenancy and cannot be named as an Applicant in this proceeding. I, therefore, amend the tenant's Application to name only the person named in the tenancy agreement as the tenant as the applicant.

The tenant submitted that he had not received any evidence for this proceeding from the landlord. The landlord testified she served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by placing them in the mailbox at the rental property on June 28, 2016 in accordance with Section 88. Section 90 of the *Act* deems documents served in such a manner to be received on the 3rd day after they have been placed in the mailbox.

In support of this position the landlord had submitted to the Residential Tenancy Branch proof of service documents stating her evidence was served on June 28, 2016 at 8:35 p.m. and that the service was witnessed by her agent. The agent attended the hearing and confirmed that he had seen the landlord leave to packages, one for each occupant.

The tenant had testified that they had been away and when they returned they did receive, from the mailbox, another unrelated notice to end tenancy but no evidence package.

Based on the landlord's submission I accept that the landlord served her evidentiary documents to the tenant by placing them in the mailbox and they are presumed to have been received 3 days later. However, receipt of documents that are served is a rebuttal presumption. As a result and based on the tenant's submissions I accept the tenant has not received the landlord's evidence. As a result, I have not considered the landlord's documentary evidence in this decision.

I also note that the tenant received the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property on May 27, 2016 and originally submitted their Application for Dispute Resolution to the Residential Tenancy Branch and paid their filing fee on June 7, 2016 or 11 days after receiving the Notice.

Section 49(8) of the *Act* allows a tenant who receives a 2 Month Notice to End Tenancy for Landlord's Use of Property 15 days to submit their Application to dispute the Notice. As the tenant has submitted his Application within that time period I find the issue of additional time is moot and I amend the tenant's Application to exclude the issue of more time.

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the 2 Month Notice to End Tenancy for Landlord's Use of Property and the continuation of this tenancy is not sufficiently related to the tenant's claim for compensation; for repairs and emergency repairs; or for the provision of services or facilities. The parties were given a priority hearing date in order to address the question of the validity of the Notice to End Tenancy.

The tenant's other claims are unrelated in that the basis for them rest largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the 2 Month Notice. I exercise my discretion to dismiss the tenant's claims for compensation; repairs and emergency repairs; and the provision of services or facilities. I grant the tenant leave to re-apply for his other claims.

I note that Section 55 of the *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*.

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 and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 49, 67, and 72 of the *Act*.

Should the tenant be unsuccessful in seeking to cancel the 2 Month Notice to End Tenancy for Landlord's Use of Property 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 tenant submitted into evidence the following relevant documents:

- A copy of a tenancy agreement signed by the parties on February 7, 2016 for a 1 year, 1 month and 2 day fixed term tenancy beginning on February 27, 2016 for a monthly rent of \$1,375.00 due on the 1st of each month with a security deposit of \$675.00 paid; and
- A copy of a 2 Month Notice to End Tenancy for Landlord's Use of Property issued on May 27, 2016 with an effective vacancy date of August 1, 2016 citing the rental unit will be occupied by the landlord or a close family member of the landlord.

The landlord submitted that right from the initial interaction with the tenant in showing the rental unit and then signing the tenancy agreement the tenant was demanding and sought to change the rental unit despite the landlord's intention to rent the unit "as is".

The landlord submitted a number of scenarios of things that have occurred during the tenancy including the tenant change a lock without permission; the report of pests, including rats and ants; the tenant's refusal to allow the pest control treatment to run smoothly; not putting hydro in his name; not allowing the landlord entry to the unit and residential property.

The landlord submitted that once the report of pests was made and after more problems arose with the tenant she offered the tenant an opportunity to mutually agree to end the tenancy. The landlord then issued the 2 Month Notice.

The landlord submitted that while she currently lives with her mother and father her intent is to have her father move into the rental unit. The landlord confirmed that her parents are not separating. She also stated that once she is finished her studies she too may move into the rental unit.

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.

Solely from the landlord’s testimony, I find the landlord has confirmed that she wanted to end the tenancy because of the poor relationship she has with the tenant. I also find that the landlord determined, first that she wanted to end the tenancy and then decided to end it for the purpose stated in the Notice.

I find, on a balance of probabilities, that the landlord’s intention is to end the tenancy and that her father would be occupying the rental unit only as a mechanism to assist the landlord in ending the tenancy.

As such, I find the landlord has an ulterior motive to seek an unconscionable advantage. As a result, I find the landlord has not issued the 2 Month Notice in good faith.

Conclusion

Based on the above, I order the 2 Month Notice to End Tenancy for Landlord's Use of Property issued on May 27, 2016 is cancelled and the tenancy remains in full force and effect.

I find the tenant is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$100.00** comprised of the fee paid by the tenant for this application.

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: July 06, 2016

Residential Tenancy Branch