



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This hearing was scheduled to deal with a tenant's application to dispute a 1 Month Notice to End Tenancy for Cause. 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

Service of documents

I heard testimony that indicated both parties had served their respective submissions upon the other party late, albeit only one day late in each case. Despite the lateness both parties had no objection to inclusion of any of the submissions and evidence. I was also satisfied that neither party was unduly prejudice by the lateness and had sufficient opportunity to review and respond to the submissions of the other party. Therefore, I permitted the written submissions and evidence to be included and I referred to the documentation during the hearing.

Jurisdiction

The landlords were of the position that the Act does not apply to this tenancy since the parties share kitchen and bathroom facilities. The tenant did not agree with the landlords' position and denied sharing a kitchen or bathroom with the landlords.

The Act applies to all residential tenancy agreements between a landlord and a tenant except where specifically excluded. Section 4 of the Act provides for exemption of certain living arrangements from the Act including:

- (c) living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation.

The parties were informed of the above exemption and I explored this matter further. Below, I have summarized the parties' respective positions.

The landlords submitted that the tenant rents a bedroom located in the basement level of their home and the tenant has "shared" access to a kitchen and bathroom in the basement. There is also a kitchen and bathroom on the upper level that is occupied by the landlords. When asked who the tenant shares the kitchen and bathroom with the landlords testified that they had a housecleaner that used to clean the tenant's bathroom every second week and that their guests have occasionally used the tenant's bathroom.

The tenant submitted that he did not agree to share the basement kitchen and bathroom with the landlords or their guests and when he discovered the landlords' guests had used his bathroom he requested a lock be installed. The tenant pointed to correspondence exchanged between the parties including an apology from the landlord for their guests entering his "flat".

I did not hear any testimony to suggest the tenant used the landlords' kitchen or bathroom on the upper floor. However, the landlord stated that the tenant has been permitted to use a fridge located in the garage and has shared use of the laundry room in the basement. The landlords also pointed out that their tenancy agreement was not put in writing.

Upon hearing from both parties, and review of the letter exchanged between the parties concerning installation of a lock on the door in between the living units, I found insufficient evidence to suggest the owner(s) of the property and the tenant were sharing a kitchen or bathroom and I preferred the tenant's position over the landlords'. I was satisfied that the landlords have their own kitchen and bathroom and do not use the tenant's kitchen and bathroom, and vice versa. I was of the view that permitted the tenant to use another fridge in the garage in addition to the fridge provided with the rental unit did not constitute sharing of a kitchen. Also, shared use of the laundry room is irrelevant. Further, section 1 of the Act defines tenancy agreements to include tenancy agreements entered into in writing, orally, express or implied meaning the lack of a written agreement is not a mechanism to avoid the Act

In light of the above, I informed the parties I was satisfied that the Act applies to this tenancy agreement and I have jurisdiction to resolve this dispute.

2 Month Notice

The landlords had submitted that they sought to enforce a 2 Month Notice to End Tenancy. I determined that the landlords had not served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use of Property in the approved form. Rather, the landlords had issued a letter to the tenant on June 30, 2016 indicating it was a 2 Month Notice.

The landlords explained that they gave the tenant the letter of June 30, 2016 with the intention of ending the tenancy as of August 31, 2016 and that the tenant requested they give him the proper two page notice. The tenant then provided them with a 1 Month notice to End Tenancy for Cause to complete, which the landlord did on July 29, 2016, and a stated effective date of August 31, 2016.

Section 52 of the Act provides that where a landlord intends to end the tenancy the landlord must use a notice to end tenancy in the approved form and provide one of permissible reasons for ending a tenancy under the Act. The approved notices to end tenancy provide a great deal of information for both parties, including information for tenants who wish to dispute the notice. I noted that the letter of June 30, 2016 does not clearly indicate one of the permissible grounds for ending a tenancy under the Act and does not provide information that would be on the approved form. Therefore, I found the letter of June 30, 2016 to be insufficient in multiple respects and I declined to give it further consideration as a legal avenue to end the tenancy.

I informed the parties that I would proceed to determine whether the 1 Month Notice to End Tenancy for Cause, which was issued in the approved form, should be upheld or cancelled.

Mutual Agreement

The landlords were given the opportunity to provide their reasons for ending the tenancy for cause. However, the landlords also made submissions that they wish to end the tenancy as they no longer want to be landlords, the landlords want to regain possession of the entire house due to aging and health issues, and the landlords will not be re-renting the unit. The landlords' continued right to issue a proper 2 Month Notice to End Tenancy for Landlord's Use of Property was discussed after which the parties were given the opportunity to attempt to resolve their dispute by way of a mutual agreement. I was able to facilitate a mutually agreeable resolution. By way of this decision and the Order that accompanies it I have recorded the mutual agreement reached by the parties during the hearing.

Issue(s) to be Decided

What are the terms of the mutual agreement?

Background and Evidence

During the hearing, the parties mutually agreed to the following terms:

1. The tenancy will continue up until November 30, 2016. The tenant must return possession of the rental unit to the landlords no later than November 30, 2016. The landlords shall be provided an Order of Possession with an effective date of November 30, 2016 to serve and enforce as necessary and appropriate.
2. The tenant shall be compensated the equivalent of one month's rent which the tenant and it is acknowledged that the tenant has benefited from this compensation for the month of September 2016.
3. The tenant shall remain obligated to pay the monthly rent that is due on October 1, 2016 and November 1, 2016.
4. The parties shall share the cost of the \$100.00 filing fee paid for this Application and since the tenant paid the filing fee the tenant is authorized to deduct \$50.00 from rent otherwise payable on October 1, 2016.

Analysis

Pursuant to section 63 of the Act, I have the authority to assist parties in reaching a settlement agreement during the hearing and to record the agreement in the form of a decision or order.

I have accepted and recorded the mutual agreement reached by the parties during this hearing and make the terms an Order to be binding upon both parties.

In recognition of the mutual agreement, I provide the landlords with an Order of Possession that is effective as of November 30, 2016.

Since the landlords testified that they will not be re-renting the unit and seek to occupy the entire house themselves, I further authorize the tenant to end the tenancy earlier than November 30, 2016 should he so chose. To end the tenancy earlier than November 30, 2016 and bring his obligation to pay rent up to November 30, 2016 the tenant must give the landlords written notice at least 10 days in advance of the date he will vacate. This notice is in keeping with notice a tenant may give a landlord where a 2 Month Notice has been served.

Conclusion

The parties resolved their dispute by way of a mutual agreement that I have recorded by way of this decision. In keeping with the mutual agreement, the landlords are provided an Order of Possession effective November 30, 2016.

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: September 20, 2016

Residential Tenancy Branch

