



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, FF; CNQ, O

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("Act") for:

- an Order of Possession for landlords' use of property, pursuant to section 55;
- authorization to recover the filing fee for their application, pursuant to section 72.

This hearing also dealt with the tenant's cross-application pursuant to the *Act* for:

- cancellation of the landlords' 2 Month Notice to End Tenancy Because the Tenant Does not Qualify for Subsidized Rental Unit, pursuant to section 49.1;
- other unspecified remedies.

One landlord, BN ("landlord") and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord confirmed that she had authority to represent "landlord BD," the other landlord named in this application as an agent at this hearing (collectively "landlords"). This hearing lasted approximately 57 minutes in order to allow both parties to fully present their submissions.

Both parties confirmed receipt of the other party's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with the other party's application.

The tenant stated that she served the landlord with her written evidence package on September 20, 2016, by way of registered mail. The landlord said that she did not receive this evidence. As per Rules 3.14 and 3.15 of the Residential Tenancy Branch *Rules of Procedure*, the tenant's own supporting application evidence is due at least 14 days before the hearing and responsive evidence to the landlords' application is due at least 7 days before the hearing. As the tenant's written evidence is deemed received on September 25, 2016, five days after its registered mailing as per section 90 of the

Act, and only three days before this hearing date, the evidence is late. I advised the tenant that I could not consider her written evidence at this hearing or in my decision because it was late and the landlord did not receive it.

The landlord testified that the tenant was served with the landlords' 2 Month Notice to End Tenancy for Landlord's Use of Property, dated July 31, 2015 ("2 Month Notice"), on the same date by way of posting to the rental unit door. The tenant confirmed receipt by her daughter but said that she was out of town when this happened, so she did not receive the notice until August 5, 2016. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was deemed served with the 2 Month Notice on August 3, 2015, three days after its posting.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenant's application to remove the relief of applying to cancel a 2 Month Notice to End Tenancy Because the Tenant Does not Qualify for Subsidized Rental Unit. The landlord said that she did not serve this type of notice on the tenant. I add the relief to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property. Both parties agreed that the tenant was only served with this type of notice. I also correct the spelling of landlord BD's surname as it was spelled incorrectly. Both parties consented to the above amendments.

Issues to be Decided

Should the landlords' 2 Month Notice be cancelled? If not, are the landlords entitled to an Order of Possession for landlords' use of property?

Are the landlords entitled to recover the filing fee for their Application from the tenant?

Is the tenant entitled to other unspecified relief?

Background and Evidence

While I have turned my mind to the landlords' documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of both parties' claims and my findings are set out below.

Both parties agreed to the following facts. This month-to-month tenancy began in October 2010. Monthly rent in the current amount of \$875.00 is payable on the first day of each month. The original rent for this unit was \$900.00 but it was reduced

approximately 1.5 years ago to \$875.00. A security deposit of \$450.00 was paid by the tenant and the landlords continue to retain this deposit.

The landlords seek an order of possession based on the 2 Month Notice, which has an effective date of October 1, 2015, for the following reason:

- *The landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant.*

The landlord stated that the landlords had to renovate and repair the rental unit, in order to prepare it for sale. She said that according to the tenant's complaints, the refrigerator drawers were broken, the microwave needed replacement, the cupboards were broken and the landlords thought there was mold on the floor. She explained that the large patio had to be refurbished. The landlord complained that the tenant was a "hoarder" and had to vacate so that the landlords could sell the rental unit.

The tenant disputes the landlords' claim, stating that she was not a hoarder, she had some boxes around the rental unit because she was preparing for a possible move, since the 2 Month Notice was issued to her. The tenant said that the rental unit does not need to be vacant to complete the above repairs to the refrigerator, microwave and cupboards that she advised the landlord about. The tenant maintained that the patio did not have to be refurbished, only power-washed.

Analysis

In accordance with section 49(8) of the *Act*, the tenant must file her application for dispute resolution within fifteen days of receiving the 2 Month Notice. In this case, the tenant was deemed to have received the 2 Month Notice on August 3, 2016. The tenant filed her application to dispute the notice on August 17, 2016. Accordingly, the tenant filed within the fifteen day limit under the *Act*. Where a tenant applies to dispute a 2 Month Notice on time, the onus is on the landlords to prove, on a balance of probabilities, the grounds on which the 2 Month Notice is based.

As per section 49(6)(b) of the *Act*, the landlords may only issue a 2 Month Notice for valid reasons, to renovate or repair the rental unit in a manner that requires it to be vacant. On a balance of probabilities and for the reasons stated below, I dismiss the landlords' application for an order of possession based on the 2 Month Notice, dated July 31, 2015, without leave to reapply. I allow the tenant's application to cancel the landlords' 2 Month Notice. The landlords' 2 Month Notice is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

I find that the landlords failed to provide sufficient evidence that they intend to renovate or repair the rental unit in a manner that requires it to be vacant. The landlords did not provide documentary evidence of estimates or quotations of renovations or repairs to be done. The landlord did not even know exactly what repairs or renovations were to be done, when questioned during the hearing. The repairs to the refrigerator, cupboards and microwave are minor and I find that they do not require the rental unit to be vacant. The landlords have not provided sufficient evidence, such as documents or independent witness testimony, that there is mold in the flooring requiring repairs or renovations or that the patio has to be refurbished, requiring the rental unit to be vacant. The tenant stated that the landlords could use the patio while the tenant was still living there.

As the landlords were unsuccessful in their Application, I find that they are not entitled to recover the \$100.00 filing fee from the tenant.

The tenant's application for "other" unspecified remedies is dismissed without leave to reapply. The tenant did not provide any evidence about this claim during the hearing.

Conclusion

The landlords' entire application is dismissed without leave to reapply.

The tenant's application to cancel the landlords' 2 Month Notice is allowed. The landlords' 2 Month Notice, dated July 31, 2015, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

The tenant's application for "other" unspecified remedies is dismissed without leave to reapply.

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 30, 2016

Residential Tenancy Branch

