Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC OPE FF – Landlord's application for Dispute Resolution
CNC - Tenants' application for Dispute Resolution

Introduction

This hearing was convened to hear matters pertaining to cross Applications for Dispute Resolution filed by both the Landlord and the Tenants.

The Landlord filed on August 15, 2016 seeking Orders of Possession for cause and for end of employment; and to recover the cost of the filing fee. Upon clarification of the Landlord's application they confirmed the Tenants were never employed by the Landlord. I therefore conclude the request for an Order of Possession for end of employment was selected due to a clerical error when completing their application and will therefore, be considered withdrawn, pursuant to section 64 of the *Act*. The application proceeded to hear the Landlord's request for an Order of Possession for cause and to recover the filing fee.

The Tenants filed their application on August 9, 2016 to cancel a 1 Month Notice to end tenancy for cause. The Tenants filed an amendment to their application on September 8, 2016 to add their request to cancel a second 1 Month Notice to end tenancy for cause which was served upon them shortly after serving the Landlord with their application for Dispute Resolution.

The hearing was conducted via teleconference and was attended by the Landlord and his Agent (hereinafter referred to as Landlords) and all three Tenants. Each person gave affirmed testimony. I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process; however, each declined and acknowledged that they understood how the conference would proceed.

The Tenants affirmed they served the Landlord with copies of the same documents and applications they had submitted to the Residential Tenancy Branch (RTB). The Landlord acknowledged receipt of those documents excluding the Tenant's amended application. The Landlord's Agent submitted she was searching through piles of paperwork from previous hearings and the documents for this hearing which were all grouped together. They could not locate a copy of the Tenants' amended application; therefore, they were unsure if they had received it.

The Tenants testified they personally served the Landlord with copies of every application, amendment and evidence document to his home. They noted that the Landlord provided his home address as his service address.

After careful consideration of the above, I favored the Tenants' submissions that they served the Landlord with their application, amended application, and all other documents they had served upon the RTB. I favored the Tenants' submissions as they were forthright; credible; and consistent. The Landlord's submissions regarding receipt of documents was relied heavily upon his Agent's ability to find the document during the hearing in an unorganized pile of papers that had been compiled from several previous proceedings. Therefore, I considered the Tenants' application; amended application; and written submissions as evidence for these proceedings.

The Landlord affirmed that they served the Tenants with copies of the same documents that they had served the RTB. The Tenants acknowledged receipt of these documents and no issues regarding service or receipt were raised. As such, I accepted the Landlord's submissions as evidence for these proceedings.

These parties testified they had attended dispute resolution on four previous occasions. Neither party raised issue with me reviewing the previous Decisions on record with the RTB. Upon review of the RTB record there were three previous dispute resolution hearings not four previous hearings. The file numbers and dates of those hearings are listed on the front page of this Decision. Those three previous hearings were each scheduled in response to the Tenants' applications to dispute consecutive 1 Month Notices to end tenancy for cause as follows:

(1) 1 Month Notice issued February 1, 2016 for the reason "Rental unit/site must be vacated to comply with a government order". Hearing March 10, 2016 with a Decision March 11, 2016 upholding the Tenants' application and cancelling the 1 Month Notice.
(2) 1 Month Notice issued March 22, 2016 for the reason "Rental unit/site must be vacated to comply with a government order". Hearing May 11, 2016 with a Decision May 11, 2016 upholding the Tenants' application and cancelling the 1 Month Notice.
(3) Month Notice issued May 29, 2016 for the reason "the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord, and/or seriously jeopardized the health or safety or lawful right of another occupant or the landlord". Hearing July 14, 2016 with a Decision July 21, 2016 upholding the Tenants' application and cancelling the 1 Month Notice.

Both parties were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Following is a summary of those submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Should the 1 Month Notices to end tenancy issued July 29, 2016 and September 1, 2016 be upheld or cancelled?
2. Has the Landlord proven new circumstances and facts upon which to continue issuing the Tenants a 1 Month Notice to end tenancy for cause until they vacate?

Background and Evidence

From the May 11, 2016 Decision the Arbitrator recorded the Landlord's agent's testimony as follows:

> *The tenancy began on or about June 1, 2014. Rent in the amount of $700.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of $350.00.*
>
> [Reproduced as written]

The Tenants' confirmed the aforementioned terms of their written month to month tenancy agreement and asserted that utilities were included in their monthly rent. The Landlord testified he only received a $200.00 cheque as the security deposit not $350.00. The Tenants asserted the Landlord was provided a cheque from the Ministry for $150.00 plus a $200.00 cheque from A.G.'s mother.

The rental unit was described as being a self-contained basement suite located in a two level single detached home. The basement suite was in existence at the time the Landlord purchased the property 8 or 9 years ago.

On July 29, 2016 the Landlords served the Tenants with a 1 Month Notice listing an effective date of September 1, 2016. On September 1, 2016 the Landlords the Tenants with another 1 Month Notice listing an effective date of October 1, 2016. Both Notices listed the exact same reason for issuing the Notice as "Rental unit/site must be vacated to comply with a government order".

The Landlords testified the evidence relating to the two 1 Month Notices to end tenancy issued July 29, 2016 and September 1, 2016 was the exact same reasons for issuing the three previous 1 Month Notices; the rental unit/site must be vacated to comply with a government order.

In the first two hearings the Landlords had provided oral evidence which the previous Arbitrators found was not sufficient evidence to uphold the Notices to end tenancy. For the third hearing, which involved the Notice to end tenancy that was not issued for the

reason the unit had to be vacated to comply with a government order, the Landlords submitted documentary evidence which consisted, in part, of the following:

- January 23, 2016 letter from the City in which the rental unit is located (herein after referred to as being "from the City") regarding "Illegal Dwelling Unit(s)";
- April 4, 2016 letter from the City informing the Landlord of the requirement for an inspection;
- June 15, 2016 letter from the City informing the Landlord of the requirement for an inspection;

From the July 21, 2016 Decision the Arbitrator had the above listed January 23, 2016 letter before her as she copied in her Decision as follows:

> *In January the landlord received a letter from the local municipality dated January 23, 2016. The letter stated, in part:*
>
> *"A recent inspection has revealed that you do not occupy the Property and that a secondary suite exists on the Property.*
>
> *For your information, [City name] Zoning By-law 1993, No. 12000 states that houses that contain secondary suites must be owner occupied. Therefore, the secondary suite at the Property is an illegal dwelling unit.*
>
> *The illegal dwelling unit must be removed from the Property, which requires the following alterations:*
> - *All cooking facilities must be removed from the illegal dwelling unit and any openings for those facilities must be wall-boarded over.*
> - *The electrical breaker controlling the range receptacle must be removed and its spot blanked on the electrical panel.*
>
> *We will conduct a follow-up inspection on April 4, 2016 at 11:00 AM to determine whether you have removed the illegal dwelling unit. If the illegal dwelling unit is not removed, further legal action will be taken."*
>
> [Reproduced as written, excluding City name]

In addition to the above, the January 23, 2016 letter issued by the City included:

> *In addition, [the City name] Council has implemented a program to identify properties with secondary dwelling units (suites), regardless of whether or not the dwelling unit is legal. This program was introduced to ensure that property owners pay their share of infrastructure costs. A charge of $526.42 per year will be added to your property taxes for the illegal dwelling unit on the Property.*
>
> [Reproduced as written, excluding City name]

The Tenants disputed all submissions from the Landlords. They asserted they had a meeting with the City and were advised the Landlord has been paying the "illegal dwelling" charge every year since he has owned the property. In addition, they submitted they have knowledge that the Landlords have rented the basement suite to previous tenants that were not part of the upstairs tenant's family unit. The Tenants argued the current upstairs tenants have told them the Landlords have offered them to rent the entire house for $1,800.00.

The Tenants argued the Landlords are only trying to evict them because the Landlords do not want to pay for their hydro costs which were included in rent. They stated the Landlord approached them prior to this hearing and told them they could stay if they increase their rent by $300.00 from $700.00 per month to $1,000.00 per month plus the money for utilities costs. The Landlord did not dispute this submission.

The Tenants argued the Landlord's son is harassing them every time the Landlord comes to pick up the rent he serves them another Notice to end tenancy.

The Landlords confirmed they have been having a dispute with these Tenants over their use of utilities; primarily their hydro usage. In addition, the Landlord confirmed paying the additional fee for the illegal suite on his property taxes since owning the property. The Landlords asserted that as of September 27, 2016 they have received a final notice from the City that they have to comply with the City by-laws. The Landlords argued they do not want to be in breach of the City by-laws.

The Landlords testified they were of the opinion they were required to serve the Tenants a 1 Month Notice every month until the Tenants move out. Prior to completion of the hearing I explained to the Landlords that the *Act* does not provide a landlord the authority to issue Notices to end tenancy to tenants repeatedly, every consecutive month, for the same reasons based on the exact same fact patterns.

As such, I ordered Landlords to wait to receive my written Decision and that if the circumstances and facts had <u>not changed</u> from those listed above, the Landlords were not to serve the Tenants with another 1 Month Notice to end tenancy for the reason the rental unit/site must be vacated to comply with a government order, as to do so may be considered a breach of the Tenants' right to quiet enjoyment.

<u>Analysis</u>

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*.

After careful consideration of the foregoing; documentary evidence; and on a balance of probabilities I find pursuant to section 62(2) of the *Act* as follows:

The letters from the City were not before the Arbitrators during the March 10, 2016 and May 11, 2016 hearings. Rather, the Landlords relied upon their orals submissions

during those hearings. As such the Landlords were found to have submitted insufficient evidence to support the February 1, 2016 and March 22, 2016 Notices to end tenancy for the reason that the unit must be vacated due to a government order and those notices were cancelled.

The City letters were before the Arbitrator during the July 14, 2016 hearing. However, the 1 Month Notice issued May 29, 2016, that was before the Arbitrator on July 14, 2016, did not list a reason that the unit must be vacated due to a government order. The Arbitrator found those City letters were not relevant to the matters before her and found also found the Landlords submitted insufficient evidence to prove the reasons listed on the May 29, 2016 Notice. As such, that Notice was cancelled and no rulings of fact or law were previously made relating to the letters issued from the City.

Upon review of the 1 Month Notices to end tenancy issued July 29, 2016 and September 1, 2016; I find those Notices to have been issued on the prescribed form and were served upon the Tenants in a manner that complies with section 88 of the *Act.* Both Notices were issued for the reasons that the unit must be vacated due to a government order, pursuant to section 47(1)(k) of the *Act.*

Upon review of the January 23, 2016 letter issued by the City, I do not find this letter to be a government order that the rental unit must be vacated. Rather, I find this letter to be a notice to the Landlord informing them of the current zoning of their property; the secondary suite has been determined to be an “illegal dwelling unit”; and the required changes that are to be completed to the suite in order to remove the “illegal dwelling unit” designation.

I make the above finding in part because that letter does not stipulate it is a compliance order; it does not stipulate the unit must be vacated; it does not state what the penalty will be if the Landlord does not comply with this letter, such as issuance of a fine; nor does it indicate options for the Landlord, such as a right to appeal or an application for a variance in zoning. The letter simply states the City “will conduct a follow-up inspection on April 4, 2016 at 11:00 a.m. to determine whether you have removed the illegal dwelling unit.”

While the letter does inform the Landlord he is required to pay $526.42 per year for the suite and remove all cooking facilities and the electrical breaker for the oven in order to remove the illegal suite designation, I accept the undisputed evidence that the Landlord has been paying the aforementioned fee the entire 8 or 9 years he has owned the property. As such I find the $526.42 fee being charged to the Landlord is not being charged as a penalty for failing to comply with the requested changes to the suite as listed in the January 23, 2016 letter. Rather, it is a fee the Landlord is required to pay in addition to his regular property taxes to accommodate the extra “infrastructure costs”.

Notwithstanding the January 23, 2016 letter stating that “if the illegal dwelling unit is not removed, further legal action will be taken”; I note that as of the date of this hearing of September 29, 2016, the Landlord had not been informed of further legal action being

taken by the City; nor has the Landlord been issued a formal order to comply. The Landlord was allegedly issued a final warning; however, that document was not before me.

Upon review of the letters issued by the City on April 4, 2016 and June 15, 2016; I find these letters to be notices of an inspection and not a government order to have the suite vacated.

Based on the foregoing, I find the Landlord and his Agent have provided insufficient evidence to uphold the reasons listed for issuing the 1 Month Notices to end tenancy issued July 29, 2016 and September 1, 2016. Accordingly, I hereby grant the Tenants' applications and I dismiss the Landlord's application for Dispute Resolution in its entirety, without leave to reapply. The Notices to end tenancy issued July 29, 2016 and September 1, 2016 are hereby cancelled and are of no force or effect.

Res judicata is a doctrine that prevents rehearing of claims and issues arising from the same cause of action, between the same parties, after a final judgment was previously issued on the merits of the case.

I favored the Tenants' submissions that they had paid $350.00 as a security deposit which was consistent with the May 11, 2016 Decision. As listed above it was the Landlord's Agent who testified during the May 11, 2016 hearing that the Tenants had paid a security deposit of $350.00 and that testimony was undisputed and recorded in the May 11, 2016 Decision. Accordingly, I find, in absence of documentary evidence to prove the contrary, the Tenants have paid to the Landlord the full $350.00 security deposit.

Section 28 of the *Act* states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance; exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with the *Act*; use of common areas for reasonable and lawful purposes, free from significant interference.

As I have now issued findings of fact and law regarding the merits of the three letters issued by the City, (as listed above) I find the Landlords cannot issue the Tenants another Notice to end tenancy on the grounds the "Rental unit/site must be vacated to comply with a government order" unless the Landlord is issued an official government order that requires the rental suite to be vacated. To do so without being issued an official government order to vacate may be considered a breach of the Tenants' right to quiet enjoyment.

I caution the Landlords that if they continue to issue the Tenants unfounded notices to end tenancy, the Tenants may be at liberty file an application for Dispute Resolution to seek monetary compensation for loss of quiet enjoyment.

Conclusion

The Tenants were successful with their applications and the 1 Month Notices to end tenancy issued July 29, 2016 and September 1, 2016 were cancelled.

This decision is final, legally binding, and 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: October 03, 2016

Residential Tenancy Branch