



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR CNL OLC

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, received at the Residential Tenancy Branch on December 12, 2016. The Tenant subsequently submitted an Amendment to an Application for Dispute Resolution, which was received at the Residential Tenancy Branch on January 06, 2017. Collectively, I will refer to these as the "Application". The Tenant applied for the following relief pursuant to the Residential Tenancy *Act* (the "*Act*"):

- an order cancelling a notice to end tenancy for unpaid rent or utilities;
- an order cancelling a notice to end tenancy for landlord's use of property; and
- an order that the Landlord comply with the *Act*, regulation or a tenancy agreement.

The Tenant attended the hearing on her own behalf, as did the Landlord. Both parties provided a solemn affirmation.

The Tenant testified the initial Application package, including the Notice of a Dispute Resolution Hearing and some documentary evidence, was served on the Landlord in person on December 22, 2016. The Landlord acknowledged receipt on that date.

The Tenant also submitted a USB stick to the Residential Tenancy Branch, which was received on January 03, 2017. The Landlord denied receipt. The Tenant acknowledged it was not served on the Landlord and submitted she was not required to serve it because it was merely proof of service of the initial Application package. The video included on the USB stick depicts service of the initial Application package on an adult who appeared to reside at the Landlord's residence. Although not a method of service permitted under the *Act*, the Landlord acknowledged receipt of the initial Application package, as noted above, and was prepared to proceed.

The Residential Tenancy Branch received a further evidence package consisting of nine pages of documentary evidence on January 03, 2017. The Landlord denied receipt of these documents. In addition, these documents were received late, contrary to Rule of Procedure 3.14. Accordingly, I have not considered them further. However, I note that the evidence contained in these documents is not necessary in making a Decision in any event. They relate primarily to service of the initial Application package and to correspondence relating to the payment of rent. However, as noted below, the Landlord withdrew the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated December 02, 2016 (the "10 Day Notice"), during the hearing.

Finally, the Tenant submitted an Amendment to an Application for Dispute Resolution, which was received at the Residential Tenancy Branch on January 06, 2016. Included with the amendment were nine further pages of documentary evidence. The amendment addressed a 2 Month Notice to End Tenancy for Landlord's Use of Property, dated December 19, 2016 (the "2 Month Notice"), which was received by the Tenant on December 22, 2016. The Landlord acknowledged receipt of these documents by registered mail and indicated he was prepared to proceed with this aspect of the Tenant's Application despite being served late, contrary to Rule of Procedure 4.6.

The Landlord did not submit any documentary evidence but provided affirmed testimony.

The parties were present and were prepared to proceed. The parties were given an opportunity to present evidence orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

During the hearing, the Landlord confirmed he wished to withdraw the 10 Day Notice. Accordingly, I have not considered this aspect of the Tenant's Application further in this Decision.

In addition, it was noted during the hearing that the Tenant's address and the Landlord's address on the Application are the same. However, during the hearing the parties confirmed the Tenant occupies a separate suite in the Landlord's townhome. The parties agreed that I amend the Tenant's Application to refer to the Tenant's unit as the "lower" suite, and the Landlord's unit as the "upper" suite.

Issues to be Decided

1. Is the Tenant entitled to an order cancelling the 2 Month Notice?
2. Is the Tenant entitled to an order that the Landlord comply with the *Act*, regulation or a tenancy agreement?

Background and Evidence

Neither party submitted a copy of the written tenancy agreement between them. However, the parties agreed the Tenant rents a separate suite on the lower floor of the townhome owned by the Landlord. The tenancy began as a fixed-term agreement from approximately October 20, 2015 to August 31, 2016; thereafter, the tenancy continued on a month-to-month basis. Rent in the amount of \$800.00 is due on the first day of each month.

As indicated on the 2 Month Notice, the Landlord testified he wishes to end the tenancy on the following basis:

The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse.

[Reproduced as written.]

The Landlord provided oral testimony confirming he intends to use the lower suite for his family. Specifically, he indicated he wishes to install a gym and home office into that space. According to the Landlord, he and his partner are considering having a baby, which would expedite the need to use the space in the lower unit.

The Tenant alleges the Landlord is not acting in good faith, and provided several reasons for this belief. First, she submitted the 2 Month Notice was issued only when the Landlord believed the 10 Day Notice would not likely be effective to end the tenancy. Second, the Tenant testified to her belief that the Landlord wishes to end the

tenancy because of her complaints relating to the Landlord's slow response to her repair requests. Specifically, she referred to requests relating to her stove, fridge, door and toilet. Third, the Tenant suggested the Landlord wished to end the tenancy because of her complaints relating to renovation and other noise. Fourth, the Tenant submitted the Landlord does not need to end the tenancy because he has sufficient space in the upper suite.

In response to the Tenant's suggestion that he only issued the 2 Month Notice because the 10 Day Notice would not be successful, the Landlord's oral testimony confirmed he had an honest but mistaken belief that he had effected a valid rent increase in accordance with the *Act*, although he acknowledged he had not used the approved form. The Landlord was adamant that he simply wishes to make use of the space in the lower suite for his family.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 49(3) of the *Act* states:

A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

[Reproduced as written.]

Residential Tenancy Branch Policy Guideline 2 elaborates upon the meaning of "good faith". It states:

Good faith is 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.

A claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End the Tenancy...

...

If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to end Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive for ending the tenancy.

[Reproduced as written.]

In this case, the Landlord testified that he intends to use the lower suite for a gym and a home office. This change will be expedited if the Landlord and his partner have a baby as planned.

For the reasons noted above, the Tenant submits the Landlord is not acting in good faith. However, I find the Landlord has an honest intention to move into the space that is currently the lower suite and use this space for a gym and home office. I find there is insufficient evidence before me to conclude, on a balance of probabilities, that the Landlord has an ulterior motive for ending the tenancy and that the Landlord has not acted in good faith.

Accordingly, I find that the Tenant's Application is dismissed. When a tenant's application to cancel a notice to end tenancy has been dismissed, section 55 of the *Act* requires that I issue an order of possession in favour of the landlord. Accordingly, by operation of section 55 of the *Act*, I grant the Landlord an order of possession which will be effective February 28, 2017, at 1:00 p.m., which is the effective date indicated on the 2 Month Notice.

As the tenancy is ending pursuant to the 2 Month Notice, it has not been necessary for me to consider the Tenant's request for an order that the Landlord comply with the *Act*, regulation or a tenancy agreement.

The parties are encouraged to consider sections 38, 49 and 51 of the Act to confirm their respective rights and responsibilities arising from the 2 Month Notice and at the end of the tenancy. The parties may contact an Information Officer at the Residential Tenancy Branch, tel: 1-800-665-8779, with any questions concerning the above.

Conclusion

The Tenant's Application is dismissed. By operation of section 55 of the *Act*, the Landlord is granted an order of possession, which will be effective on February 28, 2017, at 1:00 p.m.

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: January 17, 2017

Residential Tenancy Branch