



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, FF
 CNL, FF

Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenant. The landlord seeks an Order of Possession for landlord's use of property, and to recover the filing fee from the tenant for the cost of the application. The tenant seeks an order cancelling a notice to end the tenancy for landlord's use of property, and to recover the filing fee from the landlord.

The landlord and the tenant both attended the hearing and each gave affirmed testimony. The tenant was also accompanied by a support person who did not testify or take part in the proceedings. The parties agree that all evidentiary material has been exchanged, and the parties were given the opportunity to question each other respecting the testimony and evidence, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established that the 2 Month Notice to End Tenancy for Landlord's Use of Property was issued in good faith and in accordance with the *Residential Tenancy Act*?

Background and Evidence

The landlord testified that he is the brother and property manager of the current owner of the rental property. He does not know when the tenant moved into the rental unit or when or how much any security deposit or pet damage deposit was collected by the owner. Rent in the amount of \$500.00 per month is payable under the tenancy agreement on the 1st day of each month and there are no rental arrears. The rental unit is a basement suite, and the upper level of the rental home is currently vacant but was previously occupied by the current owner and her spouse.

Copies of a tenancy agreement and a Lease Agreement have been provided for this hearing, however the Lease Agreement is signed only by the tenant and not by a landlord and contains no date. The landlord testified that the tenancy agreement is no longer valid because only one of the owners (the wife) is currently an owner and the tenancy agreement is signed by the owner husband, so the landlord property manager provided the Lease Agreement to the tenant. The tenancy agreement shows the names of the owner husband as landlord and of the tenant dated January 22, 2016 for a tenancy to commence on January 31, 2016 on a fixed term basis for one year ending on January 31, 2017 thereafter reverting to a month-to-month tenancy or for another fixed length of time. It also shows that the rent includes water, electricity, heat, appliances, cable, storage, internet, and garbage collection. The Lease shows that the lessee is not responsible for any of the utilities, but is responsible for cable, telephone and internet.

The landlord further testified that the owners separated and the Divorce proceedings took about 2 years. The wife purchased the husband's share of the rental home in June, 2016, and it is now owned by the wife only. A registration from a land titles office has been provided by the tenant. The wife intends to move back into the rental home with her children and wishes to occupy the entire home. They are currently living with the owner's sister, and the upper level of the home has been vacant. The landlord has started renovations in the upper level and plans to renovate the lower level to accommodate the owner.

The landlord served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use of Property on January 24, 2017 by posting it to the door of the rental unit, a copy of which has been provided for this hearing. It is dated January 24, 2017 and contains an effective date of vacancy of March 31, 2017. The reason for issuing it states: "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)."

Also provided is a letter dated February 17, 2017 addressed to "Whom it may concern" from the owner wife stating that she is the sole owner of the rental property since buying out her ex-husband in June, 2016. It also states that her brother has had and continues to assume all responsibility for the property as property manager, and the owner intends to occupy the entire house for her use and that of her family.

The tenant testified that she has lived in the rental unit since September, 2012 and the landlords were husband and wife who lived in the upper level with their children. There was no tenancy agreement in writing. The husband landlord told the tenant that the landlords had a separation agreement requiring the children to stay in the matrimonial home and the parents would live there on alternate weeks, and that's what happened. The wife was eventually awarded the house but didn't move in. While the husband was moving

out, the tenant was away for a few days and left a message with the landlord wife which included a phone number for the tenant in case the landlord wife needed it.

Upon arriving home, the tenant discovered that all of her possessions stored in the garage were gone. The tenant waited until she heard someone on the property, and the landlord named in this hearing introduced himself. He made it very clear to the tenant that he was the property manager and that under no circumstances was the tenant to contact the landlord wife. The tenant asked about her belongings and he replied that he got rid of it because he didn't know whose it was. The belongings consisted of 8 or 9 blue bins containing foam and material for the tenant's work as well as Christmas decorations. Within the next couple of days, the person returned with 2 of the bins. The tenant called police who said that the tenant could press charges. The tenant contacted the person telling him that police had been called, and he replied that he would arrive right away with the bins. He did so, but 1 bin is still missing. The tenant also asked if the bins could go back into the garage, but he denied the request saying workers were going to use it for doing renovations.

The property manager, named as the landlord in this proceeding, at some point presented the tenant with an Agreement and told the tenant to look at it, then told the tenant she had to sign it. The tenant signed it but no one for a landlord signed it and it's not dated.

The landlord wife called the tenant in October or November, 2016 asking if the internet and cable, which are included in the rent could be reduced to basic service, and the tenant agreed but it didn't happen.

When the property manager took over, he provided no address for the tenant, and said he was renovating the upper level of the home for the landlord wife to move into, and the tenant asked if the basement suite would also be renovated. He replied that it wouldn't be and never mentioned anything about the landlord wife needing the entire house. However, he told the tenant at the end of December that cable and internet would be cut off at the end of January, 2017, or the tenant could choose to pay it herself. The tenant called the Residential Tenancy Branch who advised that the landlord could not do so if it was in the tenancy agreement, and that the tenant should send the property manager a letter. The tenant did so, and a copy has been provided for this hearing which advises the landlord that rent would have to be decreased and the tenant was willing to discuss it, and asked for a copy of what the tenant had signed. He had changed the mailboxes and delivered the tenant's mail, so the tenant sent the letter to the address of the upper unit.

After receiving the 2 Month Notice to End Tenancy for Landlord's Use of Property the tenant called the property manager who told the tenant that she should have seen this coming; that he needed the whole house and his vehicle was already parked there. The

tenant told him she would be contacting the Residential Tenancy Branch, and he replied, "Here's the number. You're out."

The tenant disputes that the landlord, who is the owner wife, intends to occupy the rental unit since the property manager, who is named as landlord in these proceedings, told the tenant that he needed the whole house. The tenant seeks an order cancelling the notice to end the tenancy given by the landlord.

Analysis

Firstly, I would like to address the testimony of the landlord (property manager) about the tenancy agreement and evidentiary material suggesting that the written tenancy agreement is not valid. I disagree. It is signed by a landlord and by a tenant dated January 22, 2016, prior to the date the owner wife assumed the property in the Divorce, for a fixed term tenancy to begin on January 31, 2016 ending on January 31, 2017 which may revert to a month-to-month tenancy or another fixed length of time. The tenant testified that she has lived in the rental unit since 2012 with a husband and wife landlord residing in the upper level of the rental home. There is absolutely no reason why the tenant could not enter into a written agreement with the landlord wife or landlord husband in January, 2016. Further, where another fixed term is not agreed to by the parties, the tenancy continues on a month-to-month basis, which I so find and all facilities in that agreement are included in the rent.

The Lease provided to the tenant to sign is not a valid tenancy agreement, in that it is not dated and not signed by a landlord, and does not contain the clauses required for a tenancy agreement under the *Act* or the regulations.

Further, when a rental unit transfers from a landlord to another landlord, the tenancy agreement in place follows with the rental unit, and I find that the tenancy agreement made and signed by the parties on January 22, 2016 is valid and is the tenancy agreement. The landlord may not reduce the facilities agreed to in that agreement unless the landlord gives the tenant 30 days notice in writing and reduces rent accordingly.

The landlord's evidentiary material also contains a written statement that once the tenant has vacated and leaves the rental unit clean and undamaged, the landlord will refund the rent for the last month of the tenancy once the landlord has assessed the rental unit, and that the landlord's hourly rate is \$100.00 per hour. I am not certain if that information has been provided to threaten the tenant or for what other purpose, but I find that none of it is lawful. I refer to Section 51 of the *Residential Tenancy Act* (underlining added):

51 (1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

That means that the landlord must, regardless of the condition of the rental unit at the end of the tenancy, give to the tenant the equivalent of 1 month's rent, or the tenant may withhold the last month's rent and if she does so, she is deemed to have paid the rent. Further, a landlord must not arbitrarily set a fee of \$100.00 per hour for anything.

The landlord's evidentiary material also contains a statement signed by the landlord property manager stating that, "If the matter is dragged on past March 31, 2017, ALL indirect and direct charges incur by the owner as result of the tenancy will hold (the tenant) liable; and our rate is \$100.00 per hour." I also find that to be unlawful.

I am also confused about the document provided by the landlord dated February 17, 2017 wherein a witness states that he or she witnessed the landlord (property manager) serve a notice to end the tenancy upon the tenant on January 24, 2017 and an Order of Possession on February 7, 2017. If the landlord has caused an Order of Possession to be served on the tenant, then I question why the landlord is applying for another. Perhaps the evidence is not correct.

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. In this case, I have reviewed the 2 Month Notice to End Tenancy for Landlord's Use of Property and I find that it is in the approved form and contains information required by the *Act*. The reason for issuing it and particularly the good faith intent is in dispute.

The *Residential Tenancy Act* specifies the definition of a landlord, and Section 49 deals with the definition of a landlord for the purposes of ending a tenancy for a "landlord's" use of property:

Landlord's notice: landlord's use of property

49 (1) In this section:

"landlord" means

(a) for the purposes of subsection (3), an individual who

- (i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and
- (ii) holds not less than 1/2 of the full reversionary interest

(3) 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.

It is clear that the landlord named in this proceeding is a property manager and not a landlord as defined in Section 49. He testified that the owner wife intends to occupy the rental unit, and the tenant testified that he told the tenant he would be occupying it. The landlord denies that and has provided a letter from the owner wife stating that she intends to occupy the rental unit with her children.

Although I am not satisfied that the property manager has any experience dealing with a tenancy and has not grasped the *Act* or the regulations, the compelling evidence I consider is the letter from the owner wife stating that she will be residing in the rental unit and will be occupying the entire home with her children. I am satisfied that the rental unit will be occupied by the proper landlord, and I dismiss the tenant's application.

The *Residential Tenancy Act* also states that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an Order of Possession in favour of the landlord, so long as the notice given is in the approved form. Having found that the 2 Month Notice to End Tenancy for Landlord's Use of Property dated January 24, 2017 is in the approved form, I grant an Order of Possession in favour of the landlord named in this hearing on behalf of the landlord owner effective March 31, 2017, the effective date contained in the notice.

I further order that the tenant may withhold rent for the month of March, 2017, or may give the landlord 10 days written notice to vacate the rental unit earlier and may pay rent to the effective date of the tenant's notice at the time the tenant gives such notice, and the landlord will pay to the tenant the equivalent of 1 month's rent payable under the tenancy agreement, pursuant to Section 50 of the *Residential Tenancy Act*, and may not withhold it for unpaid rent or any damage claim.

Since the landlord has been successful with the application the landlord is also entitled to recovery of the \$100.00 filing fee, and I grant a monetary order in favour of the landlord in that amount.

Conclusion

For the reasons set out above, the application of the tenant is hereby dismissed without leave to reapply.

I hereby grant an Order of Possession in favour of the landlord on behalf of the owner effective at 1:00 p.m. on March 31, 2017 and the tenancy will end at that time.

I hereby grant a monetary order in favour of the landlord as against the tenant pursuant to Sections 67 and 72 of the *Residential Tenancy Act* in the amount of \$100.00.

This order is final and binding and may be enforced.

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: February 24, 2017

Residential Tenancy Branch

