



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, ERP, FF, MNR, MT, OLC, RP

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- an Order of Possession pursuant to section 55.

The tenant applied for:

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- more time to make an application to cancel the landlord's 2 Month Notice to End Tenancy for Landlords Use of Property (the 2 Month Notice) pursuant to section 66;
- an order to the landlord to make repairs to the unit and emergency repairs to the rental unit pursuant to section 33;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties confirmed that they exchanged their documentary evidence.

Issue(s) to be Decided

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Are the tenants entitled to an order compelling the landlord to conduct repairs to the unit or suite?

Are the tenants entitled to an order to have the landlord make emergency repairs for health or safety reasons?

Are the tenants entitled to an order compelling the landlord to comply with the Act, regulation or tenancy agreement?

Are the tenants entitled to more time to make an application to cancel a notice to end tenancy?

Are the tenants entitled to a monetary order for the cost of emergency repairs?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Preliminary Issue

The tenants applied for more time to make an application to cancel a Notice to End Tenancy pursuant to Section 66 of the Act. When asked why the tenants required an extension the tenants' response was that they were busy "dealing with a lot of stuff" and would move out in two months. Despite making several attempts to glean the information the tenants were vague and contradictory of each other. Based on the unclear and insufficient evidence before me I dismiss the tenants' application for an extension of time to make an application to cancel a Notice to End Tenancy. The hearing proceeded and completed on this date.

Background and Evidence

The landlord gave the following testimony. The tenancy began on or about February 1, 2014. Rent in the amount of \$1400.00 is payable in advance on the first day of each month. The two landlords that participated in this conference are the son and daughter in law of the first two landlords listed on this decision. As the first three landlords have the same initials and for absolute clarity, the third landlord listed gave the majority of the testimony on the landlords' behalf and will be referred to from this point as "MC". MC testified that they purchased the home from the first two landlords listed and took possession of the home on May 31, 2017. MC testified that she and her husband intended to move into the property on May 31, 2017. MC testified that the tenants were personally served with the 2 Month Notice to End Tenancy for Landlords Use of Property on March 31, 2017 with the effective date of May 31, 2017. MC testified that

the tenancy agreement was a verbal one done in good faith. MC testified that the name the tenants provided when they moved was a company name. MC testified that the tenants normally paid the rent in cash but also had paid the rent with a bank draft in that company name. MC testified that she adamantly disputes the tenants' claims for a monetary order for emergency repairs. MC testified that the tenants caused a communication breakdown between the parties and that their claims are meritless. MC testified that they seek an order of possession as soon as possible.

The tenants gave the following testimony. JM testified that the reason he filed the application to dispute the notice 59 days after receiving it was that "I was busy with lots going on and I was sick too". JM testified that the landlord blocked the driveway and didn't allow him access to park his vehicle. JM testified that a window was broken and left that way for an extended period. SM testified that the landlords cut off essential services like heat and hot water for extended periods of time. SM testified that the notice to end tenancy is invalid because she didn't freely offer her company name and the landlords are lying.

Analysis

This was a highly contentious hearing. The relationship between the parties is an acrimonious one. Both parties accused the other of lying and committing fraud. Both parties were cautioned about their behaviour during the hearing. JM was cautioned several times for his aggressive behaviour and his random outbursts. While I have turned my mind to all the documentary evidence and the testimony of the, not all details of the respective submissions and arguments are reproduced here. The principal aspects of each party's claim and my findings around each are set out below.

I address the tenants' allegation that the Notice is invalid as it has a company name that was not provided by the tenants. I note that English was not the first language for the original landlords and JM, as such a verbal tenancy agreement was entered with very limited details provided other than a company name and the names of the occupants. MC testified that's what the tenants provided at move in and that's the reason for listing the company on the Notice to End Tenancy. SM originally testified that she had no knowledge of the company name. SM later changed her testimony and stated it was her personal company and that the landlords must have obtained in some fraudulent manner. I do not accept SM's version.

The landlord provided a copy of a bank draft that has the company name on to pay rent. SM testified that the original owners misspelled one letter on the company name and that in itself is evidence of fraud making the Notice invalid. When SM gave testimony

and was questioned on a point, she would provide a different version of events I find SM's testimony to be contradictory, evasive and unreliable. The spelling error is a minor one that does not alter or invalidate the Notice; the company name is a very unique one that does not cause confusion. Both parties were well aware of the company name and in SM's own testimony; she conceded that it is her company. I find that the Notice to End Tenancy is valid and is in accordance with Section 52 of the Act.

Although the tenants filed their application to dispute the notice 59 days after they received it, I have fully considered their testimony and documentary evidence. The tenants did not call into question as to whether the new owners were going to move in; they were only seeking to extend the tenancy for an additional two months to get their affairs in order and to locate a new home. Based on the above I find that they have not provided sufficient evidence to have the notice set aside. The notice is of full effect and force. The tenancy is terminated. The landlord is entitled to an order of possession pursuant to Section 55 of the Act.

As I have found that the tenancy has come to an end, I dismiss the tenants' claims; to have the landlord comply with the Act, regulation or tenancy agreement, an order to make repairs to the unit and an order to conduct emergency repairs for health and safety reasons.

The tenant is seeking \$800.00 as compensation for conducting emergency repairs. When asked, JM was unclear in providing details as to exactly what was repaired. JM made allegations that the parties have required police attendance on several occasions and that a large pile of dirt was left in the driveway preventing him from parking there. JM said he has all the paperwork to prove that he spent \$800.00; however he did not submit it for consideration for this hearing.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. The applicant must also show that they followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The tenants have failed to satisfy me that they have provided sufficient evidence to satisfy the four grounds listed above as required under section 67 of the Act. Based on the insufficient evidence before me, I must dismiss this application in its entirety.

Conclusion

The landlord is entitled to an order of possession.

The tenants' application is dismissed in its entirety.

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: June 28, 2017

Residential Tenancy Branch