Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for cancellation of the 2 Month Notice to End Tenancy for Landlord's Use of Property (the "2 Month Notice").

The individual named as the landlord in this application, JS, attended the hearing, as did her daughter, AM, and her friend, RP. At the outset I was advised that JS is 92 years old and has some difficulty hearing. JS spoke very little during the hearing. AM and RP spoke on her behalf.

The tenant attended the hearing with an advocate, and with DS as a witness.

Both of the parties were given an opportunity to be heard, to present affirmed testimony and documentary evidence, to make submissions, to call witnesses and to respond to the submissions of the other party.

Service of the tenant's application and notice of hearing and of the parties' respective evidence was not at issue.

Issues

Should the 2 Month Notice be cancelled?

Background and Evidence

The respondent JS is the mother of DS and AM. The rental building in question has three units. One is occupied by AM. Another is occupied by AM's daughter. The tenant resides in the third unit, which is on the ground floor, and is unrelated to the other parties.

JS, DS, and AM are all currently on title to the rental property. The question of the parties' respective ownership interests is before the court.

There were two written tenancy agreements in evidence. The first is signed by DS as landlord and is a month to month tenancy beginning on September 15, 2014 with a monthly rent of $700.00 payable on the 15th of the month. A security deposit of $350.00 was paid at the beginning of this tenancy.

A subsequent tenancy agreement was entered into by DS and the tenant on May 1, 2017. This is a fixed term tenancy expiring on May 1, 2018. Monthly rent is $700.00 and is due on the first of the month.

The 2 Month Notice, dated May 27, 2017, is signed by JS and indicates that it was issued for the following reason:

- *The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse.*

The tenant received the 2 Month Notice on May 31.

The respondent JS's position appears to be that she is the only legitimate landlord. RP said that DS signed as landlord on the 2014 tenancy agreement only because JS was unable to write at the time as the result of a stroke. In response to my question as to who collected the security deposit from the tenant in 2014, AM stated that she assumed that it went into a joint account shared by JS and DS, but JS said that DS had it. In written submissions signed by JS, she states:

> I confirm that while my name is not on the current lease . . . that I am a landlord . . . and have always acted as a landlord . . .since my daughter, DS and I purchased [the property] with my former spouse . . . When [the tenant] was interviewed as a potential tenant, I was present as well as [DS]. As I had previously had a stroke, [DS] signed the month to month agreement . . . on my behalf. I also asked [DS] if she would write any necessary cheques for bills . . . As I have recently been made aware that [DS] has signed a new one year lease with [the tenant], I am extremely shocked that this was done without my consent . . . I feel that my rights as a landlord have been abused. I have always been the landlord and property manager . . .

In her letter JS sets out the duties she says she has attended to with respect to the property (organizing maintenance and repair, collecting rent, paying the taxes and utilities). She also alleges DS is "furthering her own interests" and that her review of bank statements indicates months when DS has not deposited the rent cheques into their joint account. JS also indicates that the tenant has contacted DS about repairs and then contacted her when DS was unable to address the issue. The letter further states that in February the tenant contacted JS to ask if she could have her daughter move in with her. JS said no, and the tenant had her daughter move in against JS's wishes, and then had two additional vehicles, one of which was unlicensed, stored on the property for a period of time.

Also in evidence from JS were two letters dated 2009 and 2012 from prior tenant of the same rental unit directed to JS, and a receipt for the installation of a tub in the rental unit dated March 8, 2107 and made out to JS. The respondent's representatives say these materials are evidence that JS is the landlord.

The respondent appears to be alleging that the 2017 fixed term tenancy agreement is not legitimate because it was signed by DS, and also because it may have been back-dated. AM submits that it is back-dated because before issuing the 2 Month Notice she called the organization that assists the tenant with her rental payments for a copy of the tenancy agreement. That organization advised that it did not have a copy, but could secure one.

AM also pointed to a letter from the tenant to JS and AM dated June 14, 2017 stating that, based on the date she is deemed to have received the 2 Month Notice, the tenancy would not end until August 31, if it were going to end at all. AM says that this is evidence that as of the date of this letter, the tenant did not have a fixed term agreement.

In response, the tenant's advocate argued that the Act requires that a tenancy agreement include the landlord's legal name, and both agreements here contain DS's name. He further submitted that DS has performed all the essential duties of a landlord, including interviewing the applicant tenant in 2014, and that both the tenant and another organization pay the tenant's rent directly to DS.

Although DS did not speak at the hearing, in written submissions she asserts that she is the landlord and "is the one who would deal with substantive issues should they arise." She also argues that her mother does not have the legal authority to issue the notice to end tenancy as she is not the landlord. She also states that she did not consent to the

2 Month Notice and does not wish for it to be acted upon. DS also states that she and her mother are in a legal dispute regarding the apportionment of the share of the property previously held by her mother's late husband, and that AM has been put on title recently by JS.

The tenant's advocate also submitted that the Act prohibits a landlord from terminating a fixed term lease before the end of the term, and that the 2 Month Notice is void because it contains an effective date prior to the end of the term of the lease.

Also at the hearing, the tenant testified that the fixed term agreement was signed on May 1, 2017 as indicated.

Regarding the reasons cited in the 2 Month Notice, AM testified that her mother wished to use the tenant's ground floor suite to recover in because she would be having surgery. AM said that there is no set date for the surgery, but there have been some preliminary tests done. No evidence on the nature of the surgery, the recovery time, or the respondent's need for a ground floor entrance was submitted, either orally or in documentary form. AM stated that her mother currently lives in another municipality and can arrange to have someone look after her home while she recovers in the tenant's unit.

RP submitted that if I were to allow this tenancy to continue, I would be compromising the interests of AM and her daughter, who both also reside in the rental property. As it stands, DS is collecting the rent from the tenant directly and JS and AM cannot afford to continue to maintain the rental property without the tenant's rent. AM stated that if her mother moves into the tenant's suite, which will also preclude the family from collecting rental income, she "guesses" her mother will have to sell the property because of lack of rental income.

The tenant's advocate suggested that the 2 Month Notice had not been issued in good faith.

Analysis

Section 58(2)(c) of the Act requires that an application accepted under the Act be resolved unless the "dispute is linked substantially to a matter that is before the Supreme Court." Although there is a dispute between JS and DS before the courts, I find that the tenancy dispute here is not substantially linked to that matter. The tenant

before me requires a resolution of her tenancy issue, regardless of which of JS and DS own the majority interest in the rental property.

I accept that DS qualifies as a "landlord" under the Act, which defines "landlord" as including any of the following:

> (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
>
> (i) permits occupation of the rental unit under a tenancy agreement, or
>
> (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
>
> (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
>
> (c) a person, other than a tenant occupying the rental unit, who
>
> (i) is entitled to possession of the rental unit, and
>
> (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
>
> (d) a former landlord, when the context requires this;

It was agreed that, whether as agent for her mother or on her own behalf as a landlord, DS permitted occupation of the rental unit under a tenancy agreement in 2014. As set out above, the definition of "landlord" includes an agent or another person who acts on behalf of the landlord. DS's mother says that she DS not have the authority to act on her mother's behalf in signing the fixed term agreement in 2017. However, there was no evidence of any withdrawal of authority, and certainly the tenant had the right to assume that DS was capable of contracting as a landlord as DS had contracted with her in 2014.

More importantly, DS is an owner. She has also been responsible for collecting the tenant's rental payments since 2014. Obviously JS was aware of this, as she has reviewed the banking records to confirm whether DS has been depositing the rental monies into a joint account. There is no evidence JS has challenged DS's ability to collect the rental payments. Based on these considerations, I find that that DS is a landlord under the Act. The May 1, 2017 fixed term agreement is therefore valid.

Without deciding whether or not it would matter under the Act if the 2017 agreement were back-dated, there is insufficient evidence to establish that it was. The tenant testified that she signed the agreement on May 1, 2017 as indicated. The fact that the affiliated housing organization did not have a copy of the agreement when AM first requested a copy of the tenancy agreement not establish that the 2017 agreement had

not yet been signed. In fact, it appears that the organization did not have a copy of 2014 agreement either. Nor do I accept that the tenant's letter to JS and AM in June regarding the end date of the tenancy meant that the tenant did not have a fixed term agreement at that time. There was no evidence as to when the tenant understood that a landlord cannot end a fixed term agreement early under s. 49.

Section 49(2)(c) of the Act does not allow a landlord to end a fixed term tenancy agreement earlier than the date specified as the end of the tenancy in the agreement. This means that even if the 2 Month Notice were upheld, this tenancy could not end before May 1, 2018.

However, I cannot uphold the 2 Month Notice. Even accepting that JC is also a landlord (which I do not decide), JC has not established on the evidence and on a balance of probabilities that she is actually intending in good faith to occupy the rental unit.

The onus is on the applicant landlord to justify, on a balance of probabilities, the basis of a 2 Month Notice. The Notice of Hearing, received by JS, states as follows: "Evidence to support your position is important and must be given to the other party and to the Residential Tenancy Branch before the hearing." The Notice of Hearing also includes the link to the Rules of Procedure. Rule 3 of the Rules of Procedure deals with evidence generally, and Rule 7.18 states that the respondent landlord bears the onus of proof where a tenant applies to set aside a notice to end tenancy.

There was no documentary evidence of the approximate date of the surgery or the anticipated length of recovery or why ground floor access would be required. The submissions on behalf of the respondent about the need of AM and JS for the rental income from this suite in order to remain owners were inconsistent with the proposition that JS would be occupying the unit.

Additionally, the respondent's submissions suggest that she may have other motives for attempting to end this tenancy, including resentment at the tenant for having her daughter stay without the landlord's consent, the storage of an unlicensed vehicle, and the fact that the tenant's rental payments are not necessarily benefitting her.

Based on a balance of probabilities and for the reasons outlined above, I find that JS has not met the burden of proof to show that she in good faith, intends to occupy the rental unit at issue.

Accordingly, I allow the tenant's application to cancel the 2 Month Notice. The 2 Month Notice is hereby cancelled and of no force and effect. This tenancy continues until it is ended in accordance with the Act.

Conclusion

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

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Residential Tenancy Act*.

Dated: August 18, 2017

Residential Tenancy Branch