



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, FF
 CNL, RR, FF, O

Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenant. The landlord has applied for 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 has applied for an order cancelling a notice to end the tenancy for landlord's use of property; for an order reducing rent for repairs, services or facilities agreed upon but not provided; and to recover the filing fee from the landlord.

The landlord and the tenant attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other, and all evidence provided has been reviewed and is considered in this Decision. No issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

- Has the landlord established good faith intent to use the rental unit for the purpose contained in a Two Month Notice to End Tenancy for Landlord's Use of Property?
- Has the tenant established that rent should be reduced for repairs, services or facilities agreed upon but not provided?

Background and Evidence

The landlord testified that this month-to-month tenancy began on April 1, 2015 and the tenant still resides in the rental unit. The landlord purchased the rental unit, which is a duplex condominium unit, and obtained possession of both units effective July 1, 2017. The landlord does not currently reside in the rental building, and the other suite is also currently tenanted.

Rent in the amount of \$925.00 per month is due on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the tenant paid to the then landlord a security deposit in the amount of \$475.00 which was transferred to the new landlord at the time of purchase.

On August 30, 2017 the landlord served the tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property by placing it in the mailbox of the rental unit. A copy has been provided and it is dated August 30, 2017 and contains an effective date of vacancy of October 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 the parent or child of that individual's spouse)." The landlord also attempted to serve it personally but believes the tenant was evading service. The landlord also emailed a copy to the tenant on August 30, 2017 and is certain that the tenant received it prior to September 1, 2017.

The landlord further testified that the previous owner served the tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property which was disputed by the tenant and a hearing was held. The Arbitrator found that the landlord who issued the notice had no intention of living in the rental unit, and the wrong box was checked. The box that should have been checked stated: "All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing to give this notice because the purchaser or a close family member intends in good faith to occupy the rental unit." The Arbitrator cancelled the notice and said that a new notice could be served. A copy of the Decision has been provided as evidence for this hearing.

The landlord is currently living with his parents and intends to move onto the rental property, and wants to be on the top floor with the deck, and this rental unit is also the nicest one. The landlord intends to occupy it and always did.

The landlord owns another condominium which was rented in May, 2017 and the landlord has moved around but lives primarily at his parents' home. The bank wanted to see that the landlord had a lease in place as a condition to purchase this rental home.

With respect to the tenant's claim for a reduction in rent, the landlord testified that the tenant has submitted photographs of mold in window tracks, but there have been no other request for repairs.

The tenant testified that the property manager was asked to fix the windows, and the tenant renovated which is why it's the nicest place.

The first time that the tenant met the new owner, the tenant was told that the rental unit would be kept as a rental. Then the lady in the other suite told the tenant that the landlord advised he was living at his girlfriend's parent's basement suite. That didn't make sense to the tenant so the tenant did a Land Title search. The landlord has testified that he lives with his parents, but lives in another condo. As of July 5, 2017, a month after the landlord claims he rented that out, he still shows that address on Land Title documents as his current mailing address. There is no proof the landlord is living in his parent's yard or suite, and if so, the landlord ought to have provided a letter from his parents to substantiate that claim.

The tenant does not believe the landlord has good faith intent to reside in the rental unit, but the rental unit is the nicest and the landlord knows rent could be increased for a new tenant if the tenant were to move out.

Analysis

The *Residential Tenancy Act* specifies how a tenancy ends, and when ended by the landlord for the landlord's use of property, the onus is on the landlord to establish that the notice to end the tenancy was given in accordance with the *Act*, and good faith intent to use the rental unit for the purpose contained in the notice.

I explained to the parties the legal principle of *res judicata* which 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 indicated that I would be reviewing the previous Decision to ensure that I did not make a finding on a matter that had already been heard and decided upon.

Considering the testimony of the parties, and the testimony given at the previous hearing, I am satisfied that the landlord had intent when he purchased the rental unit to occupy it and the previous landlord checked off the incorrect box on the Two Month Notice to End Tenancy for Landlord's Use of Property. Regardless of how many homes a landlord owns, the landlord need only establish good faith intent to occupy the rental unit. I have no reason to disbelieve the landlord and I accept that the landlord has good faith intent to use the rental unit for the purpose contained in the notice and always did, and I dismiss the tenant's application to cancel the notice.

The *Residential Tenancy Act* 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. I have reviewed the Two 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 landlord testified that he served it on August 30, 2017 but the tenant evaded service and definitely had the notice before September 1, 2017. However, by virtue of the landlord serving it in accordance with the *Act*, being placing it in a mailbox or other conspicuous place at the rental unit, I find that the deemed date of service is September 2, 2017. Since rent is payable on the 1st day of each month, I grant an Order of Possession in favour of the landlord effective at 1:00 p.m. on November 30, 2017.

I am not satisfied that the tenant has established that rent should be reduced for repairs to windows or for any other repair or service or facility agreed upon but not provided. However, the tenant is entitled to compensation under Section 49 of the *Act*, being the equivalent of 1 month's rent, or \$925.00. The landlord testified that he is aware of the requirement to do so, and the consequences of failing to use the rental unit for the purpose contained in the notice.

The landlord also holds a security deposit in the amount of \$475.00. The tenant has not made an application claiming compensation and I order the landlord to comply with the *Act*. If the landlord fails to do so, the tenant will be at liberty to apply for monetary compensation.

Since the landlord has been successful with the application the landlord is also entitled to recovery of the \$100.00 filing fee, and I order the landlord to keep \$100.00 of the \$475.00 security deposit in full satisfaction, and to deal with the balance of the security deposit in accordance with the *Residential Tenancy Act*.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed.

I hereby grant an Order of Possession in favour of the landlord effective at 1:00 p.m. on November 30, 2017 and the tenancy will end at that time.

I further order the landlord to keep \$100.00 of the security deposit in full satisfaction of recovery of the filing fee for the cost of this application, and I order the landlord to deal with the balance of \$375.00 in accordance with the *Residential Tenancy Act*.

I further order the landlord to comply with the *Residential Tenancy Act* by providing the equivalent of 1 month's rent to the tenant by the end of the tenancy.

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: November 10, 2017

Residential Tenancy Branch