



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNL, ERP, RP

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice"), pursuant to section 47;
- 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; and
- an order that the landlord perform emergency repairs and repairs to the rental unit pursuant to section 33.

Both parties were represented at the hearing. The landlord's son, WZ (the "landlord") confirmed he had full authorization to act as agent. The tenant JM (the "tenant") primarily spoke on behalf of both tenants. The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The parties testified that the tenants were served with a 1 Month Notice on or about August 15, 2017 and a 2 Month Notice on or about October 17, 2017. The landlord confirmed receipt of the tenants' application for dispute resolution dated August 24, 2017 and evidentiary materials and an amendment to the application on October 26, 2017 in response to the 2 Month Notice. Pursuant to sections 88 and 89 of the Act, I find that the parties were served with the respective Notices, Applications, Amendments and evidence.

Issue(s) to be Decided

Are the tenants entitled to cancellation of the 1 Month Notice? If not, is the landlord entitled to an Order of Possession on the basis of the 1 Month Notice?

Are the tenants entitled to cancellation of the 2 Month Notice? If not, is the landlord entitled to an Order of Possession on the basis of the 2 Month Notice?

Should the landlord be ordered to make repairs or emergency repairs to the rental unit?

Background and Evidence

The parties agreed on the following facts. This periodic tenancy began in October, 2013. The monthly rent is \$800.00. The rental unit is the basement suite of a detached home and the landlord resides in the upstairs suite with her family. A separate storage shed building is attached to the rental building and the basement suite is accessed through a separate entrance which is accessible through the storage shed.

The landlord testified that he intends to move into the rental unit with his spouse as he has recently gotten married. He said that he currently resides in the upstairs unit with the rest of the landlord's family.

The tenant testified that the storage shed which is used as the entranceway to the rental unit leaks and there is considerable water damage. The tenant said that they informed the landlord of the need for repairs verbally and by written notice dated August 1, 2017. The tenant said some repairs have been made but are not yet completed.

The landlord testified that they are aware of the need for repairs and have undertaken necessary repairs but are delayed as the tenants refuse to provide access. The tenants testified that they have not unreasonably denied access and are available to ensure the repairs are performed.

Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within 10 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

The parties testified that the tenants were served with the 1 Month Notice on or about August 15, 2017. The tenants filed their application for dispute resolution on August 24, 2017. I find that the tenants filed their application within the 10 days provided under the *Act*.

If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 1 Month Notice.

I find, on a balance of probabilities, that the landlord has not established sufficient cause for ending this tenancy. Neither party submitted the 1 Month Notice or the tenancy

agreement into written evidence. There is insufficient evidence to conclude that a proper 1 Month Notice, conforming with the form and content requirements of section 52 was issued. I find that the landlord has not provided sufficient evidence to show that there is cause to end this tenancy. Accordingly, I allow the tenant's application to cancel the 1 Month Notice.

Section 49 of the *Act* provides that upon receipt of a notice to end tenancy for landlord's use the tenant may, within 15 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

The parties testified that the tenants were served with the 2 Month Notice on or about October 17, 2017. The tenants filed their amendment to the application for dispute resolution on October 26, 2017. I find that the tenants filed their application within the 15 days provided under the *Act*.

If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 2 Month Notice.

The tenants raised the issue of the intention of the landlord; what I found was essentially a good faith argument.

Residential Tenancy Branch Policy Guideline number 2 notes that 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. In the matter at hand the landlord must intend for the rental unit to be occupied by the landlord or a close family member of the landlord.

This Guideline reads in part as follows:

*If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End 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.

The tenant has raised the good faith intention of the landlord which I find has some basis. I find that a 2 Month Notice issued shortly after a 1 Month Notice was issued to raise doubt about the landlord's sincerity. While the landlord gave coherent and cogent testimony about his intention to move into the rental unit with his spouse, I find the timing of the Notice to raise questions about their motives.

The undisputed testimony of the parties provides the following timeline:

- August 1, 2017 – tenants give a written request for repairs to the landlord
- August 15, 2017 (on or about) – landlord issues a 1 Month Notice to End Tenancy for Cause
- August 24, 2017 – tenants file an Application for Dispute Resolution
- October 17, 2017 – landlord issues a 2 Month Notice to End Tenancy for Landlord's Use

I find the issuance of a 2 Month Notice so shortly after a 1 Month Notice was issued to raise reasonable doubts that the landlord has other purposes for issuing the 2 Month Notice. If the landlord's intention was to have the landlord's child occupy the rental unit after he got married it would be reasonable to expect that plans would have been made and known far earlier. There is no evidence that the landlord's plan for the landlord's son and spouse to occupy the rental unit was formulated or considered prior to the recent dispute with the tenants.

I find on a balance of probabilities that there is sufficient doubt regarding the intention and motivation of the landlord. Therefore, the 2 Month Notice is cancelled. The tenancy will continue until it is ended in accordance with the *Act*.

I find that the tenants have provided insufficient evidence in support of their application seeking an order that repairs be made to the rental unit. I accept the parties' testimony that both tenants and landlord are aware of the need for upgrades to the rental unit and have undertaken some work. I find that there is insufficient evidence that the landlord is not acting reasonably in performing the repairs requested. I accept the landlord's evidence that they have done some work and are waiting to complete the repairs. I find that based on the balance of the evidence presented there is insufficient basis for issuing an order that the landlord perform repairs they are in the process of doing. Consequently, I dismiss this portion of the tenants' application.

Conclusion

The tenants' application to cancel both the 1 Month Notice to End Tenancy for Cause and the 2 Month Notice to End Tenancy for Landlord's Use is successful. The Notices are of no further force or effect and this tenancy will continue until ended in accordance with the Act.

The portion of the tenants' application seeking an order for repairs and emergency repairs is dismissed with leave to reapply.

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 15, 2017

Residential Tenancy Branch