



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MT, OLC, DRI

Introduction

This hearing was scheduled to deal with a tenant's Application for Dispute Resolution. The tenant applied to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property and more time to make the request for cancellation; to dispute an additional rent increase and for orders for compliance. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and Procedural matters

1. Service of hearing package

At the outset of the hearing, I explored service of hearing documents upon each other and the Residential Tenancy Branch. The tenant filed her Application for Dispute Resolution on August 21, 2017 and did not serve it upon the landlord until October 11, 2017. An applicant is required to serve their Application for Dispute Resolution to the respondent within three days of filing, as provided under section 59 of the Act. Since the landlord had provided evidence for this proceeding and appeared prepared to respond to the Application for Dispute Resolution filed by the tenant I permitted the Application to proceed.

2. Extension of time to dispute the 2 Month Notice End Tenancy for Landlord's Use of Property ("2 Month Notice")

In filing her Application for Dispute Resolution on August 21, 2017 the tenant indicated she was seeking to cancel a 2 Month Notice that she received on August 1, 2017. However, during the hearing the tenant stated she actually received it on her door early

in the morning of August 2, 2017. The landlord testified that he had served the 2 Month Notice to the tenant in person on August 1, 2017.

Section 49 of the Act provides that a tenant has 15 days to dispute a 2 Month Notice. Whether the tenant received the 2 Month Notice on August 1, 2017 or August 2, 2017, the tenant filed to dispute the 2 Month Notice more than 15 days after she received it. Section 66 of the Act provides that the Director, as delegated to an Arbitrator, may extend time limits only in "exceptional circumstances". The tenant had requested an extension in filing her Application for Dispute Resolution but did not indicate the reason for filing outside of the time limit for doing so. I asked the tenant to provide reasons for filing late during the hearing. The tenant indicated that she was anxious and overwhelmed by the amount of paperwork and had to gather documents and evidence with respect to other matters she wanted to raise with this Application for Dispute Resolution. I found the reasons the tenant provided were not exceptional circumstances and I denied the tenant's request for an extension of time to dispute the 2 Month Notice. Having denied the tenant's request for an extension of time to dispute the 2 Month Notice, the tenant's request that I cancel the 2 Month Notice was not considered further and I dismissed her request.

Having dismissed the tenant's application that I cancel the 2 Month Notice, it is before me to determine whether the landlord is entitled to an Order of Possession under section 55 of the Act and if so, the effective date for the Order.

3. Multiple issues identified on a single application

Rule 2.3 of the Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In this case the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which was the request to cancel the Notice to End Tenancy which I dealt with.

In the hearing time that remained, I also addressed the tenant's request for Orders for compliance, namely access to the laundry facilities.

The hearing time expired before addressing the final issue, which was dispute of an additional rent increase. The tenant had provided a copy of a Notice of Rent Increase set to take effect October 1, 2017 to raise the rent from \$800.00 to \$839.00. The amount of the rent increase exceeds the annual allowable rent increase of 3.7%. However, I was also provided evidence that the landlord was seeking only \$800.00 in rent for the month of October 2017 as seen on the 10 Day Notice to End Tenancy for

Unpaid Rent dated October 2, 2017. I was not presented evidence that the tenant actually paid the rent increase. Further, the tenant has been authorized to withhold rent for November 2017 and the tenancy ends as of November 30, 2017. If the tenant did in fact pay the increased rent for the month of October 2017 the tenant may seek the overpayment from the landlord but if the parties are unable to resolve the issue, the tenant is given leave to seek remedy under another Application for Dispute Resolution.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession based on the 2 Month Notice dated August 1, 2017?
2. Is it necessary and appropriate to issue an order for compliance to the landlord?

Background and Evidence

The tenancy started September 1, 2014 on a month to month basis and the monthly rent was set at \$800.00 due on the first day of every month.

2 Month Notice to End Tenancy for Landlord's Use of Property

On August 1, 2017 the landlord issued a *2 Month Notice to End Tenancy for Landlord's Use of Property* (the 2 Month Notice) to the tenant. The landlord testified that he served it upon the tenant in person on August 1, 2017. The tenant testified that she found the 2 Month Notice posted to her door at approximately 1:00 a.m. on August 2, 2017. The 2 Month Notice has a stated effective date of October 31, 2017 and indicates the reason for ending the tenancy is "*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 the individual's spouse)*". In a letter written by the landlord on August 6, 2017 the landlord informed the tenant that his son would be moving into the rental unit. In an affidavit of November 1, 2017 the landlord swore that the rental unit would be occupied by his son. As explained earlier in this decision, the tenant did not file to dispute the 2 Month Notice within the time limit for doing so and her request that I cancel the 2 Month Notice is dismissed.

I note that the 2 Month Notice did not include a signature of the landlord; however, the tenant did not raise this as an issue during the hearing or in her written submissions. The tenant also stated that she had withheld rent for November 2017 as she is entitled to a free month of rent for receiving a 2 Month Notice. Both parties provided consistent testimony that the tenant did pay rent for the months of September 2017 and October

2017. The tenant also stated that she is looking for new living accommodation. The landlord stated that he was agreeable to permitting the tenant to occupy the rental unit until the end of November 2017 and not pay any rent for November 2017 in satisfaction of compensation payable to tenants under section 51(1) of the Act.

Order for compliance – laundry facilities

The property has two rental units on the ground floor and the landlord resides on the upper floor of the residential property. There is a common laundry room this is for the use by the two rental units. The laundry machines are equipped with coin-operated mechanisms; however, the coin operating mechanisms are no longer working. The landlord blames the tenant for breaking the coin mechanisms on the machines. The tenant denied responsibility.

The tenant submitted that the laundry machines were not coin operated at the start of the tenancy and the landlord installed the coin mechanisms sometime after the tenancy started. The landlord denied the laundry machines were ever free and stated they were coin operated from the start of the tenancy.

The tenant submitted that the tenancy agreement provides for free laundry and that the landlord prepared a different version of the tenancy agreement in support of his position. The landlord testified that the tenancy agreement was altered by the tenant and that the original tenancy agreement did not indicate free laundry.

The tenant submitted that at the start of the tenancy she had free access to the common laundry room but that starting April 2016 the landlord changed the locks and provided her access to the laundry room once per week and starting in April 2017 the landlord denied her access to the laundry room all together. The landlord indicated this information was accurate, stating that he found the tenant using the laundry machines all day long, causing the machines to overheat. The landlord pointed to hydro bills in support of his position. The landlord suspects that the tenant was running a laundry business or doing laundry for other people. The tenant denied doing so.

Since access to laundry facilities were a service or facility provided to the tenant at the formation of the tenancy, and a landlord is not permitted to restrict or terminate a service or facility without giving the tenant a proper notice one month in advance and a rent reduction for the equivalent reduction in value, I informed the parties that I would order the landlord to provide the tenant with reasonable access to the common laundry facilities on the property for the remainder of the tenancy.

The landlord was of the position that a reasonable person does one load of laundry once per week; although the landlord also acknowledged that he has never done laundry, but his wife does. The tenant requested that she be provided access once per week to do three loads of laundry per week. The tenant stated that she did not know which day of the week she needed to access the laundry machines. For reasons provided in the analysis section of this decision, **during the hearing, I orally ordered the landlord to provide the tenant with access to the laundry room one day per week so that she can do up to three loads of laundry.**

Analysis

Upon consideration of everything before me, I provide the following findings and analysis.

2 Month Notice

Section 55(1) of the Act provides as follows:

- 55** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if
- (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and
 - (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I have dismissed the tenant's application that I cancel the 2 Month Notice dated August 1, 2017 since she did not file to dispute the Notice within the time limit for doing so. Accordingly, I must provide the landlord with an Order of Possession if the Notice complies with the form and content requirements of section 52 of the Act.

The 2 Month Notice provided to me by the tenant is in the approved form, includes a reason for ending the tenancy, the names of the parties and the address of the rental unit; however, the Notice is not signed by the landlord. Section 52 provides that a Notice to End Tenancy must be signed by the person giving the Notice.

Section 68 of the Act permits me to amend a Notice to End Tenancy, as provided below:

68 (1) If a notice to end a tenancy does not comply with section 52 [*form and content of notice to end tenancy*], the director may amend the notice if satisfied that

- (a) the person receiving the notice knew, or should have known, the information that was omitted from the notice, and
- (b) in the circumstances, it is reasonable to amend the notice

Considering the tenant did not raise the lack of the landlord's signature as an issue during the hearing or in her written submissions; and, it appears the tenant has acted upon the 2 Month Notice, including filing to dispute it, looking for new accommodation and withholding rent as tenant's compensation for receiving a 2 Month Notice; I find I am satisfied that the tenant knew the information that was omitted on the Notice and it is appropriate in the circumstances for me to amend the Notice under section 68(1). Upon amendment, I find the Notice meets the form and content requirements of the Act and I proceed to issue an Order of Possession to the landlord.

I provide the landlord with an Order of Possession effective on November 30, 2017 as agreed upon by the landlord during the hearing. The tenant is permitted occupancy of the rental unit for the month of November 2017 without having to pay any rent so as to receive the compensation payable to tenants under section 51(1) of the Act.

It is important to note the tenancy has ended pursuant to the 2 Month Notice dated August 1, 2017. Accordingly, the landlord remains obligated to fulfill the stated purpose for ending the tenancy, which is that the rental unit will be occupied by the landlord or landlord's close family member after the tenancy ends. The rental unit must be occupied for that purpose for at least six months after the tenancy ends in order to avoid paying the tenant additional compensation under section 51(2) of the Act.

Order for compliance – laundry facilities

It was undisputed that when the tenancy formed and for a number of years thereafter the tenant was provided access to laundry facilities at the property, whether the machines were coin operated or not. It was also undisputed that access was restricted

starting in April 2016 and since April 2017 the tenant has been denied access to the laundry room all together by the landlord.

Section 27 of the Act deals with termination or restriction of services or facilities, as provided below:

27 (1) A landlord must not terminate or restrict a service or facility if

(a) the service or facility is essential to the tenant's use of the rental unit as living accommodation, or

(b) providing the service or facility is a material term of the tenancy agreement.

(2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord

(a) gives 30 days' written notice, in the approved form, of the termination or restriction, and

(b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

I am not satisfied that the laundry facilities were essential to the tenant's use of the living accommodation or a material term of the tenancy agreement since the tenant did not take action shortly after the laundry room access was restricted and then terminated. Accordingly, I find subsection 27(2) applies to this case.

Even if the laundry machines were coin operated at the start of the tenancy as stated by the landlord, I find there is a loss to the tenant by having to travel to another location to do laundry. Accordingly, I find that restriction or termination of access to the laundry room warranted a 30 day written notice and a rent reduction from the landlord. The landlord has not given the tenant a 30 day written notice in the approved form or a rent reduction as required. Therefore, I find the landlord is not in a position to terminate the tenant's access to the laundry facilities and I grant the tenant's request for an Order for compliance.

I find the tenant's proposal for access to the laundry room to do three loads of laundry once per week is very reasonable in comparison to the landlord's position that one load per week is sufficient. Therefore, **I ORDER the landlord to provide the tenant with**

access to the laundry room once per week so that she may do three loads of laundry. I further order that the day of the week shall be of the tenant's choosing.

Once the tenant determines the day of the week she wants, she is to communicate that to the landlord, preferably in writing.

Conclusion

The tenant's request that I cancel the 2 Month Notice dated August 1, 2017 is dismissed. The landlord is provided an Order of Possession effective November 30, 2017. The tenant is authorized to withhold rent for November 2017 in satisfaction of tenant's compensation payable under section 51(1) of the Act.

The landlord has been ordered to provide the tenant with access to the laundry room one day per week so that the tenant may do three loads of laundry on the day she chooses.

The tenant's request that I deal with an additional rent increase was dismissed with leave.

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