



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNSD, OLC, FF, OPL

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenant applied on September 5, 2017 for:

1. An Order cancelling a notice to end tenancy - Section 46;
2. An Order for the Landlord's compliance - Section 63;
3. An Order for the return of the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on September 26, 2017 for:

1. An Order of Possession - Section 55; and
2. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matter

The Landlord's application sets out the dispute address in its application as being in city “S”. The Tenant's application sets out the dispute address in its application as being city or town “B”. The Parties did not agree on which location the unit is located within. While I did indicate at the hearing that I believed the correct location to be city or town “B”, upon further consideration, given that there is no evidence confirming the correct city or town, and out of an abundance of caution I decline to make any change to either

dispute address provided by the Parties. Instead I will use the dispute address provided by the successful Party on any paper order issued to them from this Decision.

Tenant JA confirms that the Landlord' application sets out his last name spelled incorrectly and agrees to its correction.

Issue(s) to be Decided

Are the Tenants entitled to a cancellation of the notice to end tenancy?

Are the Tenants entitled to an order for the Landlord's compliance?

Are the Tenants entitled to return of the security deposit?

Are the Tenants entitled to recovery of the filing fee?

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy started on May 1, 2017 although the Tenants started the move into the unit earlier. Rent of \$1,000.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$500.00 as a security deposit. On May 1, 2017 the Landlord served the Tenants in person with a two month notice to end tenancy for landlord's use (the "Notice"). The reason for ending the tenancy as indicated on the Notice is that the Landlord or a close family member of the Landlord will be moving into the unit.

The Tenants state that when the unit was first seen the Tenants requested and the Landlord agreed to a tenancy for one to two years in length. The Tenants state that the Landlord assured them of a fixed term tenancy. The Tenants state that they paid the security deposit and the first month's rent at the end of March 2017 without signing a tenancy agreement as the Landlord told them one would be forthcoming and the Tenants trusted the Landlord to provide for their signature a fixed term tenancy agreement. The Tenants state that they repeatedly asked the Landlord for the tenancy

agreement and that the Landlords told the Tenants that no written lease would be provided. The Tenants expressed great frustration with the Landlords and their belief that the Landlords lied about providing a long term tenancy. The Tenant argues that the oral agreement for a one to two year tenancy is as binding as a written tenancy agreement. The Tenant states that he has managed rental buildings for several years and knows that written tenancy agreements are required. The Tenants seek an order for the Landlord to comply with the Act by preparing a written tenancy agreement.

The Landlord states that there was never any oral agreement or promise for a fixed term and that the tenancy was given as a month to month tenancy. The Landlord states that a written agreement was prepared off the Residential Tenancy Branch web site as a month to month tenancy. The Landlord agrees that they did promise a written tenancy agreement for signature but that they simply forgot to provide it to the Tenants and the Tenants never asked for one until now.

The Landlord states that their son will be moving into the unit, that their son gave notice to his own landlord and that their son has since moved in with the Landlords until the Tenants move out. The Landlord states that their son is moving back to their city as he was not accepted into the educational program that he had applied to attend. The Landlord provides a statement of intent to move into the unit from the son. The Landlord provides copies of text messages dated September 6, 2017 from an admissions employee of the educational institution indicating the son being on a wait list and another text from an instructor indicating that the son will not be able to attend for the fall session in reply to the son's text dated September 6, 2017. The Landlord states that their son was living with his brother and that although he moved in with his parents he left his furniture with his brother. The Landlord states that they will move their son's furniture into the unit on December 15, 2017.

The Tenant states that they were informed by the Landlord's neighbour who was supposed to attend as a Witness that over the past two years the Landlords have

repeatedly evicted tenants from the unit using the two month notice for landlord's use. The Tenant states that the neighbour informed them that the Landlord has a practice of evicting tenants this way if they don't like the tenants. The Tenant states that they did start to have issues with the Landlord and two days after they complained to the Landlord about their dog the Tenants received the Notice. The Tenant states that they are not prepared to move out on short notice and will be homeless if the Landlord is granted an immediate order of possession.

The Landlord states that they moved into the house containing the rental unit in 2015 and did not have any tenants until the current Tenants in May 2017. The Landlord states that prior to moving into the house a tenant was in place and that they did give this tenant notice to move out as they were moving in. The Landlord asks for an order of possession for December 14, 2017 in order to given the Tenants more time.

Analysis

Section 6(1) of the Act provides that the rights, obligations and prohibitions established under this Act are enforceable between a landlord and tenant under a tenancy agreement. Section 6(3) of the Act provides that a term of a tenancy agreement is not enforceable if the term is not expressed in a manner that clearly communicates the rights and obligations under it. While I do accept that the Tenants held an expectation of a one to two year lease, the evidence of a fixed term is only supported by oral evidence from the Tenants and there is no evidence of a date for the end of the fixed term. For these reasons I find that even if there was an oral agreement for a fixed term this oral agreement is not enforceable due to vagueness of a specific end date.

Section 49(3) of the Act provides that a landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. As the Tenant only gives oral evidence of third party information of the Landlord's past actions to evict without any good faith intention, considering the undisputed evidence that the son is already living in with his parents,

and given the son's written statement of his intention to occupy the unit, I find on a balance of probabilities that the Landlord has substantiated a good faith intention to occupy the unit. I find therefore that the Notice is valid and I dismiss the Tenants' claim for its cancellation.

Section 55(1) provides that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, an order of possession must be granted to the landlord if, the notice to end tenancy complies in form and content and the tenant's application is dismissed or the landlord's notice is upheld. Section 52 of the Act provides that In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

Considering that the required form and content is contained on the Notice and given the finding that the Notice is valid I find that the Landlord is entitled to an order of possession as requested for December 14, 2017. As the Landlord did not have to make its application to obtain an order of possession I decline to award the Landlord with recovery of the filing fee.

Section 13(1) of the Act provides that a landlord must prepare in writing every tenancy agreement entered into on or after January 1, 2004. As there is no agreement on the terms of the tenancy beyond the payment of rent and the collection of the security deposit and as the tenancy is ended, I decline to order the Landlord to comply with the act and prepare a written tenancy agreement for signature by the Tenants. I strongly

caution the Landlord against failing to prepare any further tenancy agreements in writing.

As the Tenants have yet to move out of the unit I dismiss their claim for return of the security deposit with leave to reapply after the end of the tenancy. As none of the Tenants' claims have been successful I decline to award recovery of the filing fee.

Conclusion

I grant the Landlord an order of possession effective 1:00 p.m. on December 14, 2017.

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: December 1, 2017

Residential Tenancy Branch