



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL OLC MNDC ERP LRE

Introduction

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

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice"), pursuant to section 49;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

DE, counsel for the landlord, represented the landlord in this hearing. Articling student AE represented the tenant in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

The landlord confirmed receipt of the tenant's application for dispute resolution ('application'). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenant's application. As both parties confirmed receipt of each other's evidentiary materials, I find that these documents were duly served in accordance with section 88 of the *Act*.

As the tenant confirmed receipt of the 2 Month Notice on October 25, 2017, I find that this document was duly served to the tenant in accordance with section 88 of the *Act*.

The tenant submitted an amendment to their application withdrawing their application for emergency repairs and for an order suspending or setting conditions on the

landlord's right to enter the suite. Accordingly, these portions of the tenant's application are cancelled.

Issues(s) to be Decided

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement?

Is the tenant entitled to an order for the landlord to comply with the *Act*?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began sometime in 2007 or 2008. Neither party was able to confirm when this tenancy had begun. There is no written tenancy agreement for this tenancy. The tenant is currently paying \$531.00 in monthly rent, payable on the first of the month. This tenancy is part of a four unit apartment building situated above a restaurant.

The tenant is making a monetary claim for one month's rent for the loss of quiet enjoyment during this tenancy. The tenant testified that she has been served multiple notices to end tenancy by the landlord for this tenancy, and all have been dismissed during arbitration. The tenant testified that these multiple attempts to evict her have caused her to lose her right to quiet enjoyment during this tenancy.

The landlord issued the 2 Month Notice dated October 25, 2017, with an effective move-out date of December 31, 2017, 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 landlord provided the following background for why they had decided to issue the 2 Month Notice. They testified that the 2 Month Notice was issued as the owner intended to renovate and reside in one of the four units she owns.

The landlord currently resides in another apartment owned by a family member, which she must vacate by November 2018. The landlord testified that the four units she owns are rented below market value, and it would be make more financial sense for her to occupy the unit she owns versus paying more to rent a more expensive unit.

The tenant disputes the 2 Month Notice was issued in good faith, stating that the landlord has not attempted to evict the other three tenants despite the other units' rent being the same with the exception of the bachelor suite. The tenant testified that she was subjected to multiple attempts by the landlord to end this tenancy, which reflects the landlord's interpersonal issues with her specifically. The landlord responded that her relationship with this tenant is no different than the others, and that she simply wanted to reside in this unit.

Both parties agreed that the tenant had paid rent for January 2018, and the landlord did not indicate to the tenant that this rent payment was for use and occupancy only.

Analysis

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below

I find that the tenant has raised doubt about the landlord's true intentions to occupy the suite.

Subsection 49(3) of the *Act* sets out that a landlord 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.

Residential Tenancy Policy Guideline 2: Good Faith Requirement When Ending a Tenancy states:

"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 that they do not have an ulterior motive for ending the tenancy.”

Although the landlord stated that they had issued the 2 Month Notice in order to occupy the suite, I find that the tenant had raised doubt as to the true intent of the landlord in issuing this notice. The tenant raised the question of the landlord's true intentions to end the tenancy. She gave undisputed sworn testimony that the landlord has made multiple attempts at ending this tenancy despite there being similar units to hers, and it was not disputed that the landlord had a strained relationship with the tenant. As the tenant raised doubt as to the landlord's true intentions, the burden shifts to the landlord to establish that they do not have any other purpose to ending this tenancy.

The landlord testified that she required a vacant unit to reside in after her own tenancy ends in November 2018. In the hearing and in her evidence, the landlord also did not provide sufficient evidence as to why this particular suite was selected despite the fact she owns 3 other units in the building, 2 of which are rented out for the same monthly rent. Furthermore the landlord did not provide sufficient supporting evidence to support that she was required to vacate her own tenancy by November 2018.

I find that the landlord has not met their burden of proof to show that they issued the 2 Month Notice in good faith to occupy this particular unit. I find that the testimony of both parties during the hearing raised questions about the landlord's good faith. I find that the tenant had raised questions about why her unit was specifically targeted on multiple occasions by the landlord, when the landlord could occupy the other similar units she owns. The landlord responded that she did not have positive relationships with the other tenants, but did not provide sufficient evidence to support this claim.

I find that the landlord has not met their burden of proof to show that they do not have any other purpose in ending this tenancy. Based on a balance of probabilities and for the reasons outlined above, I find that the landlord has not met their onus of proof to show that the landlord, in good faith, requires the tenant to permanently vacate her rental unit.

Furthermore, it was undisputed by both parties that the tenant had paid rent after the effective date of the 2 Month Notice, which was accepted by the landlord. It was also undisputed that the landlord did not indicate to the tenant that this payment was for “use and occupancy” only.

Residential Tenancy Policy Guideline #11 discusses the Amendment and Withdrawal of Notices, specifically what happens when payment is accepted after the effective date of a Notice is given.

"The question of waiver usually arises when the landlord has accepted rent or money payment from the tenant after the Notice to End has been given. If the rent is paid for the period during which the tenant is entitled to possession, that is, up to the effective date of the Notice to End, no question of "waiver" can arise as the landlord is entitled to that rent.

If the landlord accepts the rent for the period after the effective date of the Notice, the intention of the parties will be in issue. Intent can be established by evidence as to:

- *whether the receipt shows the money was received for use and occupation only.*
- *whether the landlord specifically informed the tenant that the money would be for use and occupation only, and*
- *the conduct of the parties.*

There are two types of waiver: express waiver and implied waiver. Express waiver arises where there has been a voluntary, intentional relinquishment of a known right. Implied waiver arises where one party has pursued such a course of conduct with reference to the other party so as to show an intention to waive his or her rights. Implied waiver can also arise where the conduct of a party is inconsistent with any other honest intention than an intention of waiver, provided that the other party concerned has been induced by such conduct to act upon the belief that there has been a waiver, and has changed his or her position to his or her detriment. To show implied waiver of a legal right, there must be a clear, unequivocal and decisive act of the party showing such purpose, or acts amount to an estoppel....

In order to be effective, a notice ending a tenancy must be clear, unambiguous and unconditional."

By accepting payment after the 2 Month Notice was issued to the tenant, particularly after the effective date of the Notice, and without indicating that this payment was for use and occupancy only, I find that the landlord had implied that that this tenancy was reinstated, and to continue as per the Act and tenancy agreement.

As noted above, the notice to end tenancy must be clear, unambiguous and unconditional. By accepting rent payment after the effective date of the Notice without informing the tenant that this payment was for use and occupancy only, the Notice became ambiguous whether this tenancy had ended on the effective date of December 31, 2017 or not. In addition to the landlord has not having met their burden of proof to show that they do not have any other purpose in ending this tenancy, I find that by

failing to indicate that the January 2018 payment was for use and occupancy only, the landlord had implied that the tenancy was reinstated. For all these reasons listed, I allow the tenant's application to cancel the 2 Month Notice dated October 25, 2017. This tenancy is to continue as per the *Act*, regulation, and tenancy agreement.

The tenant also made a monetary claim in the amount of \$531.00, one month's rent, for loss of quiet enjoyment.

Section 28 of the *Act* states the following:

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following...

(a) reasonable privacy;

(b) freedom from unreasonable disturbance;

I have considered the testimony of both parties, and while the tenant had provided undisputed testimony to support that she has received multiple notices to end this tenancy from the landlord, the tenant did not provide sufficient evidence to establish that the landlord failed to fulfill her obligations as required by section 28 of the *Act* as stated above. I find that that landlord has complied with the *Act* in the issuance of the previous notices to end tenancy, and having failed at having these notices upheld does not sufficiently support that the landlord failed in their obligations to comply with the *Act*. Accordingly the tenant's monetary claim for loss of quiet enjoyment is dismissed without leave to reapply.

As I find the tenant failed to provide sufficient supporting evidence and testimony as to what particular section of the *Act* or part of the tenancy agreement the landlord failed to comply with, I dismiss the tenant's application for the landlord to comply with the *Act*, tenancy agreement, or regulation.

As the tenant was partially successful in her application, I allow her to recover half of the filing fee for her application.

Conclusion

The tenant's application to cancel the landlord's 2 Month Notice is allowed. The landlord's 2 Month Notice, dated October 25, 2017, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

I issue a \$50.00 Monetary Order in favour of the tenant for recovery of half the filing fee. I allow the tenant the above monetary award by reducing future monthly rent payments until the amount is recovered in full. In the event that this is not a feasible way to implement this award, the tenant is provided with a Monetary Order in the amount of \$50.00, and the landlord(s) must be served with **this Order** as soon as possible.

The remainder of the tenant's application is dismissed without 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: January 19, 2018

Residential Tenancy Branch