



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REMAX MANAGEMENT SOLUTIONS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC OPC FFL

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (“the Act”). The landlord applied for an Order of Possession pursuant to section 55 and authorization to recover the filing fee for this application from the tenants pursuant to section 72. The tenant applied to cancel the landlord’s 1 Month Notice to End Tenancy for Cause (“1 Month Notice”) pursuant to section 47 and to recover their filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing. Tenant LE (“the tenant”) attended on behalf of both tenants. Both parties were given a full opportunity to be heard, to present their sworn testimony, and to make submissions.

The tenant confirmed receipt of the landlord’s 1 Month Notice to End Tenancy by mail on or about November 7, 2017 as well as the landlord’s Application for Dispute Resolution (“ADR”). The landlord confirmed receipt of the tenants’ ADR made within 10 days of the tenant’s receipt of the 1 Month Notice.

Issues to be Decided

Should the 1 Month Notice be cancelled or is the landlord entitled to an Order of Possession? Is either the landlord or the tenants entitled to recover their filing fee?

Background and Evidence

This residential tenancy agreement began in October 2014. The current rental amount of \$2600.00 is payable each month. The landlord submitted a copy of two residential tenancy agreements – one is signed by both parties and typewritten by the landlord –

the second agreement is created on a Residential Tenancy Branch form and signed by the landlord but not by the tenant. The landlord testified that the tenant(s) refused to sign the residential tenancy agreement.

The landlord issued a 1 Month Notice to End Tenancy for Cause relying on the following ground,

*Tenant (or a person permitted on the property by the tenant) has **seriously** jeopardized the health or safety or lawful right of another occupant or the landlord.*

The landlord argued that the tenant had seriously jeopardized the landlord's lawful right to access the rental unit. The landlord testified that the rental unit property has been for sale for some time and that the tenant refuses to allow the landlord to show the rental unit to prospective buyers. As well, the landlord testified that the tenant actively attempted to disrupt the process of selling the premises.

The landlord testified that one potential sale has already fallen through as a result of the tenant's actions, particularly refusing access to the rental unit and refusing to vacate the rental unit. The landlord testified that the rental property has now been sold. He testified that the possession date for this rental unit was December 31, 2017, prior to the date of this hearing. The landlord submitted a copy of notifications to the tenant including a May 10, 2017 letter regarding the change in management to the realty company. This letter included information regarding the ongoing payment of rent.

In a letter dated May 25, 2017, the realty/management company sent a letter on behalf of the landlord to the tenant stating that the rental property had been listed for sale, that the realty company would do its best to minimize the interruptions to the tenant and to assure the tenant that, "once the property is sold...all the terms and conditions of your present agreement will still apply...your tenancy cannot be ended by the seller or the purchaser unless the purchaser plans to convert your residence to another use..." On the same date (May 25, 2017), the company prepared;

- a mutual agreement to end tenancy form and attempted to have the tenant agree to sign that form.; and
- a letter that advised the tenant his tenancy would be subject to termination for a breach of a material term if he did not allow sufficient access to the rental unit for showings.

On October 29, 2017, the landlord attempted to provide the tenant with a notice that the purchasers of the property required vacant possession. On October 31, 2017, a 2

Month Notice to End Tenancy was prepared but not served to the tenant. The landlord's representative at this hearing testified that he was unable to serve the tenant with the 2 Month Notice.

The landlord submitted a variety of documents that included but were not limited to: Notice of inspections of rental unit for a variety of residential tenancy issues including smoke alarm inspections; and Notices to enter rental unit for showings dated mainly May 25, 2017 with respect to showings scheduled for; June 3, June 7, June 9, June 10, June 14, June 16, June 23, June 24, June 28, June 30, July 1, July 4 (2017). While the landlord testified that the tenant refused to allow the landlord's agents to enter the premises on a variety of dates from July 2017 to September 2017 and he provides a handwritten log of those dates, he did not provide copies of Notices to enter the rental unit for this time period.

The landlord testified that the tenant is well aware the tenancy must end. The landlord testified that the landlord has provided a rental payment receipt to the tenant that reads, "for use and occupancy only" on each rental payment for more than 6 months now. The landlord testified that the tenant dodges the landlord's calls and attempts to meet the tenant at the property. The landlord testified that the tenant was presented with a mutual agreement to end tenancy including compensation to end the tenancy but refused to sign the agreement.

The tenant, speaking on behalf of both tenants, acknowledged that he refused to sign a new tenancy agreement because he wished to continue with the old agreement in place prior to the current management. He testified that he did not agree to the changes within the document and felt he was under pressure to acquiesce to the management company's demands. The tenant testified that he took down the 'for sale' sign on the rental unit property at one point because he was told he could take it down and it was blocking the tenants' front window. He testified that, when asked by the management company, he put the sign back up. He testified that he and his co-tenant do not wish to move. He testified that he refused to sign the mutual agreement to end tenancy because he doesn't want to vacate the residence. He testified that if he is required to vacate, he wants to be served the proper notice to end tenancy: a 2 Month Notice to End Tenancy. The tenant argued that, because no 2 Month Notice to End Tenancy has been issued to the tenants, they are not required to vacate the rental unit.

Both parties also applied to recover their filing fees for their applications.

Analysis

The landlord relied on section 49 in his submissions with respect to his request for an Order of Possession: section 49 allows a landlord to end a tenancy for the landlord's use of the property. The relevant portion of section 49 to the sale of property by the landlord is reproduced below,

- 49** (2) Subject to section 51 [*tenant's compensation: section 49 notice*], a landlord may end a tenancy for a purpose referred to in subsection (3), (4), (5) or (6) by giving notice to end the tenancy effective on a date that must be
- (a) not earlier than 2 months after the date the tenant receives the notice,
 - (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
 - (c) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy...
- ...(5) A landlord may end a tenancy in respect of a rental unit if
- (a) the landlord enters into an agreement in good faith to sell the rental unit,
 - (b) all the conditions on which the sale depends have been satisfied, and
 - (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
 - (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit...
- (7) A notice under this section must comply with section 52 [*form and content of notice to end tenancy*].

In this case, the landlord did not issue a 2 Month Notice to End Tenancy for Landlord's Use and therefore he is unable to rely on section 49 of the Act. The landlord's representative at this hearing testified that there was "not time" to issue a 2 Month Notice. Instead, after failing to have the tenant agree and sign a mutual end to the tenancy, the landlord issued a 1 Month Notice to End Tenancy for Cause relying on the ground that the tenant (or a person permitted on the property by the tenant) has seriously jeopardized the health or safety or lawful right of another occupant or, in this case the landlord.

The landlord's representative made submissions, largely undisputed regarding the tenant's refusal to allow the landlord to show the property while it was for sale and now that the property is sold, a refusal to give possession of the property to the landlord. The tenant claims that the landlord's submissions are accurate in fact but inflated. In order to end the tenancy based on a 1 Month Notice to End Tenancy, the landlord must prove, on a balance of probabilities, that the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord. However, in the landlord's application, they rely almost exclusively on the tenant's jeopardy to the lawful right of the landlord to access and ultimately sell his property.

Residential Tenancy Policy Guideline No. 7 provides further explanation of the Residential Tenancy Act's rights for both the tenant and the landlord in accessing the rental unit. While a tenant has the right to "quiet enjoyment and peaceful occupation of the premises", the landlord has the right to enter the rental unit for certain purposes including to show the unit to prospective purchasers. Unless there is an emergency, a landlord must give sufficient notice and the notices and amount of access must be reasonable in all of the circumstances.

The landlord has provided some evidence to show that the tenant was advised that the property was for sale and, at least for the first few months, notified with respect to showings of the property. The tenant was not always willing to cooperate with the landlord's agent and was a stickler for receiving notice. It is the tenant's right, as indicated in Residential Policy Guideline No. 7 to enjoy his property with minimal disruption and inconvenience. In fact, this is something that is promised to the tenant by the agents when they began to manage the property.

I do not accept the tenant's testimony that he was advised to take actions including removing for sale signs from his yard and not answering the phone or the door when the landlord attempts to communicate with him, I do not find that these actions warrant an end to tenancy for Cause. Despite the mischievous actions of the tenant, the landlord has failed to prove that the tenant has **seriously** jeopardized the health or safety or lawful right of the landlord. I find that the tenant has not denied the landlord access to his unit entirely or in some egregious manner. In fact, the tenant has allowed multiple showings of the rental unit and the landlord has had more than 1 offer for the rental unit.

The fact that the landlord negotiated a sale date that did not allow for the timely issuance of the proper notice to the tenant does not negate his obligation to end the tenancy in a manner that accords with the Act or by agreement with the tenant. I find

that the landlord has presented insufficient evidence to show that the tenant or tenants have taken action that substantially and seriously jeopardize the landlord's lawful right to the rental unit. I remind the parties to this hearing that they both have rights to the unit under the Act and they must both be aware of their obligations in ensuring the other party's rights are preserved in whatever action they take.

Based on consideration of all of the evidence, I am not satisfied that the landlord had sufficient grounds to issue the 1 Month Notice and obtain an end to this tenancy for cause. Therefore, I grant the tenant's application to cancel the Notice to End Tenancy. The tenancy will continue.

As the tenant was successful in his application, he is entitled to recover the filing fee from the landlord.

As the landlord was unsuccessful in his application, the landlord is not entitled to the recovery of the filing fee.

Conclusion

I grant the tenant's application to cancel the 1 Month Notice and dismiss the landlord's application for an Order of Possession.

I issue a monetary order in the amount of \$100.00 to the tenants.

The tenants are provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: February 14, 2018

Residential Tenancy Branch