



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, ERP, RP, PSF, MNDCT,

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution (the Application) pursuant to the *Residential Tenancy Act* ("the *Act*") for:

- cancellation of the landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the Two 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 the landlord to make emergency repairs to the rental unit pursuant to section 33;
- an order to the landlord to provide services or facilities required by law pursuant to section 65; and
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67.

Landlord A.C., Landlord L.C., Landlord A.C.'s interpreter and the tenant attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Landlord L.C. (the landlord) indicated that she would be the primary speaker for the landlords.

While I have turned my mind to all the documentary evidence, including the testimony of both parties, not all details of the respective submissions and/or arguments are reproduced here.

The tenant testified that they served the landlord with the Application by way of registered mail on November 15, 2017. The landlord confirmed that they received the Application. In accordance with section 89 of the *Act*, I find the landlord was duly served with the Application.

The tenant testified that they served their evidence to the landlord by way of registered mail on January 10, 2018. The landlord confirmed that they received the tenant's

evidence. In accordance with section 88 of the *Act*, I find the landlord was duly served with the tenant's evidence.

The landlord testified that they served their evidence to the tenant by way of registered mail on January 17, 2018. The tenant confirmed that they received the landlord's evidence. In accordance with section 88 of the *Act*, I find the tenant was duly served with the landlords' evidence.

The tenant testified that they received a Two Month Notice on October 30, 2017 and another Two Month Notice on November 07, 2017. In accordance with section 88 of the *Act*, I find the tenant was duly served with the Two Month Notices.

Issue(s) to be Decided

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

Is the tenant entitled to an order to the landlord to make repairs and emergency repairs to the rental unit?

Is the tenant entitled to an order to the landlord to provide services or facilities required by law?

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

Background and Evidence

Written evidence was provided that this tenancy commenced on June 01, 2010, with a current monthly rent of \$600.00, due on the first day of each month. The landlord and tenant agreed that no security deposit was requested or paid to the landlord.

A copy of the landlord's signed October 30, 2017, Two Month Notice and a copy of the landlord's November 03, 2017, Two Month Notice were entered into evidence. In the Two Month Notices, requiring the tenant to end this tenancy by February 01, 2017, the landlord cited the following reason:

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 that individual's spouse).

The landlord entered into written evidence:

- a copy of a sworn and notarized Statutory Declaration that the landlord's family member will be moving into the rental unit and that Landlord L.C. and Landlord L.S. are the same person as Landlord L.C. was using her husband's last name at the time that her father died; and
- a copy of a property assessment and land title document showing that Landlord L.C. is a registered owner of an undivided half of the property with Landlord A.C.

In addition to some of the above, the tenant also entered into written evidence:

- a copy of a letter outlining the tenant's submissions;
- a copy of the last page of a previous decision from the Residential Tenancy Branch (RTB) showing the tenant was successful in cancelling a One Month Notice to End Tenancy for Cause (the One Month Notice); and
- copies of receipts for certified cheques for payment of rent and registered mail sent to the landlord.

The landlord testified that she owns 50% of the residential premises that contains the rental unit in dispute with her mother, Landlord A.C., and that she has provided evidence to support this. The landlord submitted that she issued the Two Month Notice to the tenant in good faith and has provided a notarized document that her family member is going to move into the rental unit. Landlord L.C. stated that her son is the family member that is going to move into the rental unit and is the reason why she issued the Two Month Notice to the tenant. Landlord L.C. confirmed that the monthly rent for January 2018 has been paid by the tenant.

The tenant questioned why Landlord L.C. did not move her son into the lower unit of the residential premises as they just recently had a new occupant move into the lower unit for November 2017. The tenant also questioned why Landlord L.C.'s son cannot move into the lower unit in Landlord A.C.'s house, which is on the same lot as the residential premises in dispute. The tenant stated that there is ample space in Landlord A.C.'s house for the son to live as Landlord L.C. previously lived there with her three sons for six months.

The tenant stated that the occupant in the lower unit of the residential premises told her that he was going to paint the interior of the residential premises for the purpose of having new renters. The tenant also, in her submissions, questioned the right of Landlord L.C. to issue the Two Month Notice as the tenant only recognizes Landlord A.C. as her landlord. The tenant also in her evidence submission questioned the good faith of the landlord as the landlord was not successful with a previous One Month Notice to End Tenancy for Cause (the One Month Notice).

The landlord admitted that the occupant is going to do some painting but not for the purpose of having new renters. The landlord stated that the tenant's mother, who previously lived in the lower unit, had sublet the lower unit to the occupant currently living there without the landlord's permission and they do not plan on renting the residential premises to anyone in the future after the painting is done.

Landlord A.C., through her interpreter, stated that the lower unit in her house is full of boxes and is a storage area for her with no plans of anyone occupying it. Landlord L.C. testified that she did live with her mother for a period of time but that they did not use that lower unit in Landlord A.C.'s house when they were living there.

The tenant stated that the lower unit in the residential premises flooded with sewage around Christmas in 2016 and that it has affected the flooring in her rental unit as well as impacting her ability to use the sink to brush her teeth as the sink is not draining properly. The tenant testified that she has verbally requested the landlord to rectify the issue but that nothing has been done. The tenant, in her evidence submission stated that she is seeking the costs associated with the registered mailing for this hearing and the costs of certifying cheques to pay the rent.

Landlord A.C. submitted that the tenant has not approached her about any plumbing issues and reaffirmed that her grandson is going to move into the rental unit. Landlord L.C. testified that they had a plumber fix the issue in the lower unit when the flooding occurred and that it did not affect the upper unit that the tenant rents.

Analysis

Section 49 of the *Act* allows a landlord to end a tenancy if the landlord or a close family member is going to occupy the rental unit.

Section 49 of the *Act* provides that upon receipt of a Notice to End Tenancy for Landlord's Use of Property the tenant may, within 15 days, dispute the notice by filing

an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove the Two Month Notices were issued to the tenant in good faith and truly intends on doing what they said they would do on the Two Month Notice. As the tenant disputed this notice on November 14, 2017, and since I have found that the Two Month Notices were served to the tenant on October 30, 2017 and November 07, 2017, I find the tenant has applied to dispute both Two Month Notices within the time frame provided by section 49 of the *Act*.

Residential Tenancy Policy Guideline #2 defines “good faith” as 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. The Guideline goes on to say that 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 the question as to whether the landlord had a dishonest purpose is raised.

When the good faith intent of the landlord is called into question, the burden rests with the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The Guideline requires the landlord to establish that they do not have another purpose that negates the honesty of intent or demonstrates they do not have an ulterior motive for ending the tenancy.

I have reviewed all documentary evidence and the testimony of both parties and I find that Landlord L.C. has provided sufficient evidence to prove that she has part ownership of the rental unit and has the right to issue the Two Month Notice for her son to live in the rental unit.

Based on the above and a balance of probabilities I find that, although the landlords have provided evidence and testimony that they intend to use the rental unit in a manner allowed by section 49 of the *Act*, the landlords have not issued the Two Month Notices to the tenant in good faith and I find the landlords have an ulterior motive for seeking to end the tenancy.

I find that the first Two Month Notice served to the tenant, dated October 30, 2017, was issued on the same date that the previous decision from the RTB is dated in which the arbitrator cancelled the One Month Notice and that the second Two Month Notice was issued seven days later. I find, on a balance of probabilities, that the issuance of the first Two Month Notice on the same date of the previous RTB decision and the second Two Month Notice seven days later is directly associated with the landlord’s failure to end the tenancy by way of the One Month Notice.

While I accept that Landlord L.C. is seeking to end the tenancy to have her son move into the rental unit, I also find the landlords have an ulterior motive to end the tenancy. I find that Landlord L.C.'s intention of having her son living in the rental unit is simply an excuse for the landlords to end the tenancy and not the primary reason for issuing the Two Month Notice, which negates the honesty of the landlords' intentions.

For the above reasons, the Two Month Notices dated October 30, 2017, and November 03, 2017, are set aside and this tenancy will continue until ended in accordance with the *Act*.

Section 7 (1) of the *Act* states that if a landlord or tenant does not comply with this *Act*, the regulations or tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results

I find the tenant's monetary claim, for the cost of the registered mailing for this hearing and for the certified cheques to pay the rent, is not recoverable. I find that there is no evidence that these costs are a result of the landlord not complying with the *Act*, regulations or tenancy agreement as the landlord has the right to receive the monthly rent pursuant to section 26 of the *Act* and to issue the Two Month Notice to the tenant pursuant to section 49 of the *Act*. I further find there is no evidence provided that the landlord will not accept rent in any form other than a certified cheque.

For the above reasons, the tenant's monetary claim for damage or loss under the *Act*, regulations or tenancy agreement is dismissed, without leave to reapply.

Section 33 of the *Act* allows for a tenant to complete an emergency repair when the landlord has not completed the emergency repair in a reasonable amount of time. Section 33(3) of the *Act* requires the tenant to make two attempts to telephone, at the number provided, the person identified by the landlord as the person to contact for emergency repairs and allowing the landlord reasonable time to complete the repairs

Section 33(1) of the *Act* defines emergency repairs as made when the repair is urgent, necessary for the safety of anyone or for the preservation of use of residential property, for the purpose of repairing major leaks in pipes or roof, damaged or blocked water or sewer pipes or plumbing repairs, primary heating system, damaged or defective locks that give access to a rental unit, electrical systems or in prescribed circumstances, a rental unit or residential property.

I find that the tenant has not provided any evidence of any communication with the landlords for repairs, emergency repairs or for services or facilities agreed upon but not provided.

I further find that the tenant has not provided any evidence that these repairs or emergency repairs are required or that the landlord has not provided services or facilities agreed upon. If there is a plumbing issue then it should be addressed by the landlord and, if it is not, the tenant should provide a formal request in writing or follow the instructions above regarding section 33 (3) of the *Act* if it is an emergency.

For the above reasons I dismiss the tenant's Application regarding repairs, emergency repairs and for services and facilities agreed upon to be provided, with leave to reapply.

Conclusion

The Two Month Notices dated October 30, 2017, and November 03, 2017, are cancelled and of no force or effect.

This tenancy continues until ended in accordance with the *Act*.

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 01, 2018

Residential Tenancy Branch