



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNL ERP RP

Introduction

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

- cancellation of the landlords' 2 Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice"), pursuant to section 49; and
- an order to the landlord to make repairs to the rental unit pursuant to section 33.

KI ("landlords"), agent for the landlords, represented the landlord in this hearing. KR, advocate for the tenant, attended with 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 landlords confirmed receipt of the tenant's application for dispute resolution ('application'). In accordance with section 89 of the *Act*, I find that the landlords were 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 November 27, 2017, I find that this document was duly served to the tenant in accordance with section 88 of the *Act*.

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Issues(s) to be Decided

Should the landlords' 2 Month Notice be cancelled? If not, are the landlords entitled to an Order of Possession?

Is the tenant entitled to an order to the landlords to make repairs to the rental unit?

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. There is no written tenancy agreement for this tenancy. The current landlords took over this tenancy in 2015. The tenant is currently paying \$455.00 in monthly rent, payable on the first of the month. The tenant resides in a “cottage” on the property that is also used as a manufactured home park.

The landlords issued the 2 Month Notice dated November 27, 2017, with an effective move-out date of January 31, 2018 for the following reason:

- The Landlord has all necessary permits and approvals required by law to convert the rental unit to non-residential use.

The landlords 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 rental unit is in fact a converted storage shed by the previous owners, who had allowed the tenant to reside there.

The landlords testified that this conversion is not compliant with fire regulations, and posed a fire hazard as the home had no heating, and the tenant relied on portable heaters. The landlords testified that the “cottage” contains no kitchen, and just a shower and washroom. The landlords would like to convert the rental unit back to a storage shed as the requested repairs by the tenant were not possible. The landlord testified that the locksmith has confirmed that the locks were not repairable, and they have no way to fulfill the tenant’s request for repairs to the locks. The landlords submitted photos of the home, but did not submit any permits, approvals, or reports for this hearing.

The tenant disputes the 2 Month Notice was issued in good faith, stating that the landlord had only issued the 2 Month Notice after he made a request for repairs to the door lock. The tenant testified that he had lived there for 10 years, which confirms that there was no issue with him continuing to reside in this converted shed as a residence.

The tenant also requested repairs to the door lock, as he believes that the door and lock is repairable.

Analysis

Subsection 49(6) of the *Act* sets out that a landlord may end a tenancy in respect of a rental unit where the landlord, in good faith, has all the necessary permits and approvals required by law and intends in good faith, to... convert the rental unit to a non-residential use.

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."

The landlords stated that they had issued the 2 Month Notice because the landlord wished to convert the rental home back to a storage shed as the landlords felt that the home was previously converted to rental property, and is not an actual residence.

The Residential Tenancy Act defines a "rental unit" and "residential property" as follows:

"rental unit" means living accommodation rented or intended to be rented to a tenant;

"residential property" means

- (a) a building, a part of a building or a related group of buildings, in which one or more rental units or common areas are located,
- (b) the parcel or parcels on which the building, related group of buildings or common areas are located,
- (c) the rental unit and common areas, and
- (d) any other structure located on the parcel or parcels;**

The landlords expressed concern that the tenant requested repairs, which the landlords did not feel were possible. The landlords did not provide any reports, permits, approvals, or witness testimony to support the landlord's belief that the home must be converted back to non-residential use, and that the home did not meet housing or safety standards. I find that the rental unit meets the definition of a rental unit in accordance with the Residential Tenancy Act.

I find that the tenant has raised doubts as to the landlords' true intentions as the landlord issued the 2 Month Notice following the request for repairs, and the landlords expressed concern in the hearing that they were unable to perform these repairs. The tenant testified that he had lived in

the home for over ten years without issues and that demonstrated that this converted storage shed met the requirements of a rental unit.

I find that the landlords have not met their burden of proof to show that they issued the 2 Month Notice in good faith, and that the landlord had all the necessary permits and approvals required by law to convert the rental unit to non-residential use. Based on a balance of probabilities and for the reasons outlined above, I find that the landlords have not met their onus of proof to show that the landlords, in good faith, require the tenant to permanently vacate his rental unit in order to convert it to non-residential use.

Accordingly, I allow the tenant's application to cancel the 2 Month Notice. The landlords' 2 Month Notice, dated November 27, 2017, is hereby cancelled and of no force and effect. This tenancy continues until it is ended in accordance with the *Act*.

Section 32(1) and (2) of the *Act* outlines the following obligations of the landlord and the tenant to repair and maintain a rental property:

32 (1) *A landlord must provide and maintain residential property in a state of decoration and repair that*

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

Section 31 of the *Act* outlines the following prohibitions on changes to locks and other access

Prohibitions on changes to locks and other access

31 (1) A landlord must not change locks or other means that give access to residential property unless the landlord provides each tenant with new keys or other means that give access to the residential property.

(1.1) A landlord must not change locks or other means of access to a rental unit unless

(a) the tenant agrees to the change, and

(b) the landlord provides the tenant with new keys or other means of access to the rental unit.

(2) A tenant must not change locks or other means that give access to common areas of residential property unless the landlord consents to the change.

(3) A tenant must not change a lock or other means that gives access to his or her rental unit unless the landlord agrees in writing to, or the director has ordered, the change.

Section 28 of the *Act* outlines the tenant's right to quiet enjoyment

Protection of tenant's right to quiet enjoyment

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;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

I have considered the testimony of both parties, and I find that the tenant had provided undisputed evidence that the lock of the exterior sliding door was not in working condition. The tenant testified that there was a functioning lock on the door for the last ten years, and that the landlord had failed to fulfill their obligations as required by section 32(1) of the *Act* as stated above. Although I accept the landlords' testimony that the home is a converted storage shed, and that the landlords had contacted a locksmith who could not repair the broken lock, I find that the landlords had not provided sufficient evidence in the form of any reports, or witness testimony, to support that the landlord is unable to provide and maintain the rental unit in a manner that complies with safety and housing standards, taking in consideration the age, character, and location of the rental unit.

As section 31(2) and (3) of the *Act* prohibits the tenant from changing the lock that gives access to his rental unit unless the landlord agrees to it in writing, or unless a director makes an order to do so, I order the landlords to repair the tenant's lock. If it is not possible to repair the tenant's lock, I order that the landlords repair the tenant's entire door in a manner that fulfills the landlord's obligations in accordance with sections 31 and 28 of the *Act* as listed above.

Conclusion

The tenant's application to cancel the landlords' 2 Month Notice is allowed. The

landlord's 2 Month Notice, dated November 27, 2017, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

I order the landlords to repair the tenant's lock. If it is not possible to repair the tenant's lock, I order that the landlords repair the tenant's entire door in a manner that fulfills the landlord's obligations in accordance with sections 31 and 28 of 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 22, 2018

Residential Tenancy Branch