



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNL ERP OPL FF

Introduction

Both parties attended the hearing and gave sworn or affirmed testimony. The Notice to End Tenancy is dated March 30, 2018 to be effective May 31, 2018 and the tenant confirmed it was served personally on March 31, 2018. The tenant filed their application to dispute on April 27, 2018 and said they served it personally on April 27, 2018 as confirmed by the landlord. I find the documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing.

The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To cancel a notice to end tenancy for landlord's use of the property pursuant to section 49;
- b) To extend the time limit to make this application pursuant to section 66;
- c) To order the landlord to do emergency repairs; and
- d) To recover the filing fee for this application.

Issue(s) to be Decided:

Should the tenant be granted more time to file this application to dispute the notice? If so, has the landlord proved on the balance of probabilities that they require the property for their own use? Or is the tenant entitled to any relief? Is the landlord entitled to an Order of Possession if the tenant is unsuccessful in the application?

Has the tenant proved on the balance of probabilities that the property requires emergency repairs and the landlord has been notified and failed to act?

Background and Evidence

Both parties and a witness attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced in September 2015, it is now a month to month tenancy, rent is \$1600 a month and a security deposit of \$800 was paid. The landlord served a Two

Month Notice to End Tenancy for landlord's use of the property as he said he is going to move into the house himself. He recounted his background of moving around for work and living abroad for a time and now wanting to move into his own house.

The tenant said they did not believe the landlord but thought he was just going to renovate the house and sell it. He said he had some texts indicating this but they were not in evidence. He also said the landlord had bought a trailer and would probably live in that. The landlord reiterated his intention of moving into his own home. He said he does intend to fix it up a bit while he is living there.

The parties discussed the situation. I advised the landlord of his obligation to give one free month's rent to the tenant. The tenant had not paid rent for June 2018 but wants to stay until July 31, 2018 because of the effort of moving a house of goods and obtaining another rental. After negotiation, the parties freely and voluntarily agreed to the following terms and conditions:

Settlement Agreement:

- 1. The landlord will obtain an Order of Possession effective July 31, 2018.**
- 2. The tenant will have free rent for July 2018 pursuant to sections 49 and 51 of the Act.**
- 3. The tenant will immediately pay the rent for June 2018.**

The tenant also made a request for emergency repairs. He recounted how the roof of the unit had leaked for a large portion of his tenancy and how this detracted significantly from their enjoyment of the unit. The landlord agreed the tenant advised him in 2016 that the roof was leaking and he arranged to have it fixed in February 2016. However the fix was defective and it leaked again so in April 2017, he had the whole roof redone again. The tenant agreed this was true and the parties agreed that the roofer had still not done an effective job. The landlord had paid twice and now has launched an action in small claims court regarding this. The landlord provided bills to support his statements regarding repair.

Analysis:

The tenant had requested an extension of time to file this application. He said he did not have the money for the filing fee and was unsuccessful at getting it waived. Section 66 of the Act sets out criteria for extending the time limit established by the Act in exceptional circumstances Section 66(3) provides an arbitrator must not extend the time limit to make an application for dispute resolution to dispute a Notice to End Tenancy beyond the effective date of the Notice. I find the effective date on the Notice to End

Tenancy was May 31, 2018 and the tenant filed his Application on April 27, 2018 so I find I have jurisdiction to consider the request.

Policy Guideline 36 clarifies exceptional circumstances as follows:

Exceptional Circumstances

The word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word "exceptional" implies that the reason for failing to do something at the time required is very strong and compelling. Furthermore, as one Court noted, a "reason" without any force of persuasion is merely an excuse. Thus, the party putting forward said "reason" must have some persuasive evidence to support the truthfulness of what is said.

I find the tenant provided evidence of financial circumstances which did not permit him to file the application until he received a pay check. I find the evidence is that the office refused to waive the filing fee so he was unable to file in time. I find this is a sufficient reason to grant this time extension. Also the landlord did not object to granting the time extension for the tenant to dispute the Notice to End Tenancy. I proceeded to hear the matter.

I find the landlord satisfied the onus of proving on a balance of probabilities that he intends to occupy the home himself. I find his evidence credible as he gave a straightforward and logical account of his reasons for moving into the home. Although the tenant claimed he had texts disproving this, he supplied none in evidence. I dismiss his application to set aside the Two Month Notice to End Tenancy. Pursuant to section 55 of the Act, I find the landlord is entitled to an Order of Possession in these circumstances. In accordance with the above noted settlement agreement, I find the landlord entitled to an Order of Possession effective July 31, 2018.

In respect to the tenant's request for emergency repairs, I find the weight of the evidence is that the landlord has not neglected to repair. I find he has tried to maintain the home as required by section 32 and 33 of the Act but a roofing company has failed to do the job properly, although engaged twice by the landlord in 2016 and 2017. In any case, I find it is moot now to order repairs as the tenancy has ended. I dismiss this portion of the tenant's claim.

Conclusion:

I dismiss the tenant's application without recovery of the filing fee due to lack of success. I find the landlord entitled to an Order of Possession effective July 31, 2018 as agreed.

I HEREBY ORDER that the tenant pay the rent for June 2018 in the amount of \$1600 immediately to the landlord.

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: June 06, 2018

Residential Tenancy Branch