



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNL RP

Introduction

Both parties attended the hearing and gave sworn testimony. They confirmed the Two Month Notice to End Tenancy dated April 5, 2018 to be effective June 6, 2018 was served by posting it on the door. The effective date on the Notice is automatically corrected to June 13, 2018 pursuant to section 53 of the *Residential Tenancy Act* as a Notice to End Tenancy for landlord's use of the property must give a full two months' notice and end the tenancy on the day before the day in the month that rent is payable under the tenancy agreement according to section 45 (1) (b). The parties agreed rent is payable on the 14th of the month. The tenant /applicant gave evidence that they served the Application for Dispute Resolution dated April 19, 2018 by registered mail and the landlord agreed they received it. 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 conversion of the unit for use by a caretaker, manager or superintendent of the residential property pursuant to section 49;
- b) To order repair to the unit pursuant to section 32 and 33; and
- c) To find the landlord is acting in bad faith.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that they need to end the tenancy in order to convert the unit for use by a caretaker or manager? 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 a balance of probabilities that the landlord has failed to maintain the property and they are entitled to an Order to repair?

Background and Evidence

Both parties 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 September 14, 2016, rent is \$800 a month and a security deposit of \$200 was paid. The landlord served a Notice to End Tenancy for the following reasons: *The landlord intends to convert the rental unit for use by a caretaker, manager or superintendent of the residential property.*

The landlord said the tenant's unit is very suitable for the caretaker, manager as it is a corner unit and closer to the road. They are converting the building back to its original use as a motel with short term rentals. He plans to be the caretaker/manager himself and to occupy it.

The tenant disputes the landlord's stated purpose for she said there were a number of other suites that had become vacant and the landlord could have used one of them for his purpose; she used G.'s suite which had been renovated and available as an example and the bunkhouse as another example. She said G.'s suite was only one suite from her suite and the landlord is doing some minor work and renting at a much higher rent. She said the landlord had filled at least two suites before this arbitration. The landlord said they have a long list of prospects and G's suite was rented out and no others are available. He said he had a conversation with the tenant and thought they had an agreement that she was going to vacate; the tenant said she is not going anywhere now and needs more time. She is not prepared to vacate.

The tenant and her witness alleged the landlord is not acting in good faith. They cited two examples of the landlord attempting to evict her under the *Hotel Keeper's Act* and the last one under the *Residential Tenancy Act* which failed so she was served with the current Notice to End Tenancy. They noted the landlord is hostile to the tenant and encourages other tenants to be hostile too. They cited one instance of an upstairs tenant playing music very loud and being rude when requested to turn it down.

The tenant also requests an Order to Repair to the landlord as there is mould in her unit, the refrigerator and freezer do not work and the door and window do not fit the frames and allow cold air to pass through. She alleged she gave written notice to the landlord but did not keep a copy for evidence. She provided a photograph of the landlord knocking on her door on February 3, 2018 as evidence. The landlord said the tenant does not let him in to inspect and arrange for repairs.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

Analysis:

As discussed with the parties in the hearing, the onus is on the landlord to prove on a balance of probabilities that they have good cause to evict the tenant. I find the evidence of the landlord lacked credibility in respect to the cause cited for ending the tenancy. I find the weight of the evidence is that other good suites were available for use for his caretaking/managing duties at and during this Notice period, one of which was only one door from the tenant's unit. I find the evidence is that the landlord has been fixing up suites and re renting at a higher rental.

The tenant alleges the landlord is acting in bad faith. I find Policy Guideline 2 of the Residential Policy Guidelines clarifies the issue of bad faith. It 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 they do not have an ulterior motive for ending the tenancy.

I find there is a valid question as to the good faith of the landlord. During the hearing, he made it clear that he wants this tenant gone and he has issued a number of Notices under the Hotel Keeper's Act and a recent one under this Act. While he may have a valid reason in good faith to end this tenancy, I find he has failed to establish it with his evidence. I set aside and cancel the two Month Notice dated April 5, 2018. The tenancy is continued.

In respect to the tenant's request for repairs, I find insufficient evidence that she has notified the landlord in writing of the need for repairs and made a time available for him to do the repairs. Nevertheless, I find section 32 of the Act requires a landlord to maintain the property and section 27 of the Act requires him to provide facilities. I find the tenant entitled to an Order to Repair.

Conclusion:

The Application of the Tenant to set aside the Notice to End Tenancy is successful. I set aside and cancel the Notice to End Tenancy dated April 5, 2018. The tenancy is continued. The filing fee was waived.

I HEREBY ORDER THAT:

- 1) The landlord inspect and repair if necessary the refrigerator and freezer of the tenant by June 30, 2018.**
- 2) The tenant to arrange with the landlord a time for inspection and repair by June 25, 2018.**
- 3) The landlord to inspect and repair if necessary the mould and ill fitting door and windows in the tenant's unit by June 30, 2018.**

I give the tenant leave to reapply for a rent rebate with sufficient evidence of her compliance and the landlord's non-compliance of the above Orders, if any, after July 15, 2018.

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 19, 2018

Residential Tenancy Branch