



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-4M

Introduction

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

- cancellation of the Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit (the Four Month Notice) pursuant to section 49.

The landlords, their agents 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 K.A. indicated that their legal counsel (Counsel) would speak on their behalf during the hearing. Landlord P.G. (the landlord) represented the numbered company named in this dispute and indicated that Agent P.N. (the Agent) would speak on their behalf during the hearing.

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

The Counsel and the Agent acknowledged receipt of the Application for Dispute Resolution (the Application) served to them by registered mail on June 01, 2018. In accordance with section 89 of the Act, I find that the landlords were duly served with the Application.

The tenant acknowledged receipt of the landlords' evidence, which was personally served to them on July 13, 2018. In accordance with section 88 of the Act, I find that the tenant was duly served with the landlords' evidence.

The tenant confirmed that she did not submit any evidence to the Residential Tenancy Branch or to the landlords.

The tenant acknowledged receipt of the Four Month Notice, which was personally served to her on May 27, 2018. In accordance with section 88 of the *Act*, I find that the tenant was duly served with the Four Month Notice.

The Four Month Notice was not provided in evidence at the time of the hearing. Counsel and the Agent stated that neither of them currently had a copy of the Four Month Notice in their possession as the original copy was given to the tenant.

The tenant was given until the end of the business day on July 25, 2018, to provide the Four Month Notice to the Residential Tenancy Branch (RTB). As service of the Four Month Notice to the tenant from the landlord is the reason that the tenant filed the Application for this hearing, I find that the landlord is not prejudiced in accepting the Four Month Notice from the tenant as late evidence.

The tenant did submit a copy of the Four Month Notice by the deadline noted above. As such, I have considered this documentary evidence. The tenant also provided additional evidence in addition to the Four Month Notice

Rule 3.14 of the Residential Tenancy Branch Rules of Procedure states that documentary evidence that is intended to be relied on at the hearing must be received by the respondent not less than 14 days before the hearing. I find that the tenant did not serve the landlord with their additional evidence in accordance with the Rules of Procedure and that the landlord may be prejudiced by this as they did not have a chance to respond to the tenant's evidence. For this reason I will not consider the tenant's additional documentary evidence.

Issue(s) to be Decided

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

Background and Evidence

All parties agreed that this tenancy began on March 01, 2017, with a current monthly rent of \$400.00, due on the first day of each month. The tenant testified that no security deposit was paid to the landlord.

The tenant submitted a signed copy of the landlord's May 27, 2018, Four Month Notice into evidence. In the Four Month Notice, requiring the tenant to end this tenancy by October 01, 2018, the landlord cited the following reason to end the tenancy:

Convert the rental unit to a non-residential use

On the Four Month Notice, the landlord has not checked a box that indicates whether the landlord has all necessary permits or approvals required by law, or, that permits or approvals are not required.

The landlords entered into written evidence:

- A copy of a signed document from Landlord K.A. containing numerous statements regarding their relationship with the tenant and with the numbered company named as the other landlord in this dispute. Landlord K.A. states in this document that she owns the trailer court that the manufactured home is situated in but she does not own the manufactured home. The landlord further states that the numbered company owns the manufactured home and is in the process of buying the land that the trailer court and manufactured home are on from Landlord K.A., but that this sale is not yet completed. Landlord K.A. submits that the numbered company plans to re-develop the land but that Landlord K.A. is not involved in this process. Landlord K.A. maintains that she collects the rent from the tenant only as an agent of the numbered company. Finally, Landlord K.A. states in the document that they have been informed that the numbered company intends to relocate the manufactured home to a different municipality where it will be used as an office or an eating area;
- A copy of a document showing that the numbered company is the owner of the manufactured home that the tenant is renting;
- A copy of an internet web page dated July 13, 2018, from the municipality that the trailer court is located in which shows that the land it is on has an application in place to re-zone it for a townhouse development. The status of the proposed re-development is in the Initial Review stage; and
- A copy of a written timeline of events regarding the rental unit in dispute;

Counsel confirmed with Landlord K.A. that the signature on the document containing her written statements is actually hers and is the extent of her oral evidence submission.

The Agent stated that the tenant signed a one year lease to rent the manufactured home until it was needed by the numbered company and that the lease was extended on a month to month basis as the rental unit was not needed until recently.

The Agent submitted that the numbered company needs the manufactured home that the tenant is renting for use as a caretaker suite at one of their sites in a different municipality than it is currently located. The Agent testified that an application for re-development of the land is in process with the municipality that the manufactured home is located in and that the manufactured home needs to be moved.

The tenant questioned the landlord as to whether there is a permit issued to move the manufactured home that she is renting. The tenant submitted that there are municipal by-laws which restrict the movement and placing of manufactured homes.

The Agent stated that the landlord had not started the process with the municipality where the manufactured home is intended to be moved to and that they are not aware of any restrictions at this time.

The tenant stated that Landlord K.A. had approached the tenant to sign a mutual agreement to end the tenancy, which the tenant refused to sign, and that Landlord K.A. served the Four Month Notice to the tenant shortly after the tenant's refusal to sign the mutual agreement to end the tenancy. The tenant testified that she was unaware that her landlord was a numbered company as she was only aware of Landlord K.A., who acts as the landlord by accepting the monthly rent. The tenant stated that she only became aware of the numbered company after receiving the Four Month Notice.

The tenant submitted that the Agent's lack of knowledge regarding permits required or any restrictions from the municipality with regards to moving the manufactured home bring into question the landlord's intentions.

Analysis

Section 49 (6) of the *Act* allows a landlord to end a tenancy if the landlord has all necessary permits and approvals required by law, and intends in good faith, to convert the rental unit to a non-residential use.

Section 49 (8)(b) of the *Act* provides that upon receipt of a Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit the tenant may, within 30 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 Four Month Notice was issued to the tenant in good faith and truly intends on doing what they said they would do on the Four Month Notice.

As the tenant disputed this notice on June 01, 2018, and since I have found that the Four Month Notice was served to the tenant on May 27, 2018, I find that the tenant has applied to dispute the Four Month Notice within the time frame provided by section 49 of the *Act*.

RTB Policy Guideline #2 states that when a landlord ends a tenancy under section 49 (6), they must have the permits or approvals required by law before they can give the tenant notice and that it is not sufficient to give notice while in the process of or prior to obtaining permits or approvals. The Guideline further states that if no permits or approvals are required by law, the landlord should obtain written proof of this.

RTB Policy Guideline #2 also establishes that good faith is a legal concept and means that a party is acting honestly when doing what they say they are going to do or what they are required to do under the legislation or tenancy agreement. 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.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

In the case before me, I find the landlord has failed to provide sufficient evidence to corroborate their submission that the rental unit is going to be converted to a non-residential use in a different municipality.

I find that, based on the evidence, affirmed testimony and a balance of probabilities, that the landlord has not provided sufficient evidence to support their stated intentions. Although the Agent states that they signed a one year lease for the rental unit, with the intention of having the tenant move out of the unit when they needed it for a different use, I find there is no lease, addendum or any type of signed agreement provided in evidence which supports this statement.

I accept the tenant's statement that she was not aware of a numbered company being her landlord as this is supported with Landlord K.A.'s written statement that she collected rent from the tenant. I find that the fact the tenant did not know about the numbered company being the owner of the rental unit impacts the credibility of the Agent's statement that there was a one year lease with an understanding regarding the future use of the rental unit.

I further find that, on the second page of the Four Month Notice, there is a declaration to be made by the landlord that they either have the permits or approvals required by law, or, that the permits or approvals are not required by law to do what the landlord says they are going to do. I find that, upon being questioned by the tenant regarding any required permits or approvals, the Agent was not aware of whether permits or approvals would be required for the stated purpose of the Four Month Notice.

I find that the Agent of the landlord has not demonstrated or provided any documentary evidence as to whether permits or approvals are required to move the manufactured home. I further find that the Agent has not demonstrated that they have made any efforts regarding the movement of the manufactured home, which does not support their stated intentions and is not sufficient to prove that the landlord intends on doing what they have said they are going to do on the Four Month Notice. I find that the difference in testimony between Landlord K.A. and the Agent regarding the intended conversion of the manufactured home as an office/eating area as opposed to a caretaker suite impacts the credibility of the Agent's testimony. I further find that the landlord has not provided any actual documentary evidence which supports their plan to move the manufactured home to a different municipality.

I find that the landlord has demonstrated that they may have an ulterior motive in issuing the Four Month Notice as they are in the process of re-developing the land it is on and the Agent has made it clear in their testimony that the re-development of the trailer court, which requires the manufacture home to be moved, is closely tied to the landlord's issuance of the Four Month Notice

Even if the landlord intends on converting the rental unit, I accept the tenant's submissions that the landlord only decided to issue the Four Month Notice upon the tenant not agreeing to sign a mutual agreement to end the tenancy, which negates the honesty of the landlord's intent.

For the above reasons, I find the landlord has not provided sufficient evidence to demonstrate that they are going to move the manufactured home to a different municipality and convert it to non-residential use.

Therefore, the Four Month Notice dated May 27, 2018, is set aside and this tenancy will continue until ended in accordance with the *Act*.

Conclusion

The tenant is successful in their Application.

The landlord's Four Month Notice dated May 27, 2018, is cancelled and of no force or effect.

This tenancy will continue until it is 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: July 27, 2018

Residential Tenancy Branch