



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNE FFT OLC

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 48;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

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 landlord confirmed receipt of the tenant's application for dispute resolution ('application'). In accordance with section 89 of the *Act*, I find that the landlord was 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 1 Month Notice, which was posted on her door on June 27, 2018, I find that this document was served to the tenant in accordance with section 88 of the *Act*.

Issues(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to an order for the landlord to comply with the *Act* and tenancy agreement?

Is the tenant entitled to recover the filing fee for this application?

Background and Evidence

This month-to-month tenancy began on August 15, 2017. Monthly rent is currently set at \$550.00, payable on the first day of each month. The tenant continues to reside in the rental unit. There is no written tenancy agreement for this tenancy.

Although the landlord indicated several reasons why he wished to end the tenancy, the landlord testified in the hearing that he wished to end the tenancy for the following reason:

- (a) the rental unit was rented or provided to the tenant for the term of his or her employment,
- (b) the tenant's employment as a caretaker, manager or superintendent is ended, and
- (c) the landlord intends in good faith to rent or provide the rental unit to a new caretaker, manager or superintendent.

The landlord testified that he was withdrawing the other reasons indicated on the notice. The landlord provided the following background for why he had decided to issue the 1 Month Notice. The landlord testified that the tenant was formally employed by him, and that the rental unit was provided as part of her employment. Both parties confirmed that the employment has ended as of November 2017.

The tenant disputes the landlord's testimony that the rental unit was provided as part of her employment. The tenant testified that she did casual work for the employer as she already had a job as a fire warden. The tenant testified that she had discovered that the landlord had a vacant unit for rent while already doing work for the landlord. The tenant testified that she had started working for the landlord in May of 2017, and moved into the rental unit in August of 2017. The landlord testified that he did not purchase the property until June 2017, and the rental unit was offered as part of the tenant's employment.

The tenant testified that the 1 Month Notice was not issued in good faith, and that the landlord has issued numerous Notices to End Tenancy, and was not successful in Arbitration. The tenant testified that the landlord has continued to harass her, and use these notices as a tactic to evict her and attempt to raise the rent. The tenant testified that this is the third Notice issued to her.

The tenant is also applying for the landlord to repair the damaged carport. The landlord did not dispute the fact that the carport had collapsed, but did not have the funds to repair it. The landlord testified that this was not an issue as the tenant had a driveway she could use. The tenant testified that she required the carport as the driveway was inaccessible in the winter due to snow. The landlord testified that the tenant was responsible for snow removal, and it was her choice not to address this issue.

Analysis

Section 48(1) of the *Act* allows a landlord to end a tenancy of a person employed as a caretaker.

Landlord's notice: end of employment with the landlord

48 (1) A landlord may end the tenancy of a person employed as a caretaker, manager or superintendent of the residential property of which the rental unit is a part by giving notice to end the tenancy if

- (a) the rental unit was rented or provided to the tenant for the term of his or her employment,
- (b) the tenant's employment as a caretaker, manager or superintendent is ended, and
- (c) the landlord intends in good faith to rent or provide the rental unit to a new caretaker, manager or superintendent

The tenant testified that the tenancy was separate from her casual employment with the employer, and although her employment has ended she should be entitled to stay. The landlord testified that the rental unit was offered for the term of the tenant's employment, and he required the unit back now that the employment has ended. The tenant testified that this 1 Month Notice was just another tactic as part of the landlord's intent to harass her, and raise the rent.

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."

Although the landlord stated that they had issued the 1 Month Notice as the tenancy was part of the tenant's employment that had ended, I find that the tenant had raised doubt as to the true

intent of the landlord in issuing this notice. The tenant gave undisputed sworn testimony that the landlord has issued the tenant at least 2 previous Notices to End Tenancy, and was unsuccessful in having these notices upheld by an Arbitrator. Furthermore, I find the landlord did not provide sufficient evidence to support that this rental unit would be offered to a new caretaker. As the tenant raised doubt as to the landlord's true intentions, the burden shifts to the landlord to establish that they do not have any other purpose to ending this tenancy.

I find that the landlord has not met their burden of proof to show that they issued the 1 Month Notice in good faith. Although the landlord testified that they required the unit to be vacant as the tenant's employment has ended, I am not satisfied that the landlord has provided sufficient evidence to support that this tenancy was part of the tenant's employment with the landlord. I find that the tenant was already employed by the landlord before this tenancy began, and I find that the tenant provided evidence that supported that her employment with the landlord was a casual one and unrelated to her tenancy. Furthermore, I find that the testimony of both parties during the hearing raised questions about the landlord's good faith. The landlord did not dispute the fact that the tenant has made several unsuccessful attempts at ending this tenancy for different reasons. The landlord did not provide sufficient evidence that he required this rental unit for a new caretaker. Based on a balance of probabilities and for the reasons outlined above, I find that the landlord has not met their onus of proof to show that that this tenancy was part of the tenant's employment, and that the landlord in good faith intends to rent this unit to the new caretaker.

Accordingly, I allow the tenant's application to cancel the 1 Month Notice. The landlord's 1 Month Notice, dated July 27, 2018 is hereby cancelled and of no force and effect. This tenancy continues until it is ended in accordance with the *Act*.

The tenant filed an application for an order for the landlord to comply with the *Act*. The landlord testified in the hearing that he has fulfilled his obligations as a landlord.

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.

Although I find that it was undisputed that the carport is indeed damaged and not available for use, I am not satisfied at this time that the landlord has failed to comply with section 32(1) of the *Act*. Accordingly, I dismiss the tenant's application for the landlord to comply with the *Act*, and for repairs, with leave to reapply.

I find the tenant is entitled to recover the filing fee for this application.

Conclusion

The tenant's application to cancel the landlord's 1 Month Notice is allowed. The landlord's 1 Month Notice, dated July 27, 2018 is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

I allow the tenant to implement a monetary award of \$100.00 for the recovery of the filing fee, by reducing a future monthly rent payment by that amount. In the event that this is not a feasible way to implement this award, the tenant is provided with a Monetary Order in the amount of \$100.00, and the landlord must be served with **this Order** as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The remaining portion of the tenant's application is dismissed with leave to reapply.

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: October 4, 2018

Residential Tenancy Branch