



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNL, FFT, LRE, OLC

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on September 2, 2018 (the "Application"). The Tenants applied as follows: to dispute a One Month Notice to End Tenancy for Cause dated August 31, 2018 (the "One Month Notice"); to dispute a Two Month Notice to End Tenancy for Landlord's Use of Property dated August 20, 2018 (the "Notice"); for an order to suspend or set conditions on the Landlord's right to enter the rental unit; for an order that the Landlord comply with the Act, regulation and/or the tenancy agreement; and for reimbursement for the filing fee.

The Tenants appeared at the hearing. The Landlord appeared at the hearing with Legal Counsel and her husband. The Landlord called the Witness during the hearing. The Witness was not involved in the conference call until required.

Pursuant to rule 2.3 of the Rules of Procedure (the "Rules"), I told the Tenants at the outset that I would not consider their requests for an order to suspend or set conditions on the Landlord's right to enter the rental unit or for an order that the Landlord comply with the Act, regulation and/or the tenancy agreement. These issues are not sufficiently related to the dispute of the notices to end tenancy which was the main issue before me.

I asked Legal Counsel whether I should hear the dispute of the Notice or One Month Notice first considering the time allotted for the hearing. Legal Counsel asked that I deal with the dispute of the Notice first.

I explained the hearing process to the parties who did not have questions when asked. The parties and the Witness provided affirmed testimony.

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing package and evidence. The Landlord confirmed she received the hearing package and Tenants' evidence.

The Tenant confirmed he received the Landlord's evidence. He stated that he did not receive the evidence within the 14-day timeline. I advised that the requirement for the Landlord as respondent was to serve the evidence at least seven days prior to the hearing pursuant to rule 3.15 of the Rules. Legal Counsel confirmed this was done. The Tenant confirmed he had a chance to review the evidence. The Landlord's evidence was admitted in the circumstances.

The parties were given an opportunity to present relevant oral evidence, make relevant submissions and ask relevant questions. I have considered all documentary evidence and oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, is the Landlord entitled to an Order of Possession?
3. Should the One Month Notice be cancelled?
4. If the One Month Notice is not cancelled, is the Landlord entitled to an Order of Possession?
5. Are the Tenants entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted as evidence. It is between the Landlord and Tenants in relation to the rental unit. The tenancy started March 2, 2017 and was for a fixed term ending March 2, 2018. Rent is \$1,500.00 per month due on the first day of each month. The parties agreed the tenancy agreement was signed by all parties.

The tenancy agreement includes an addendum. The addendum includes term seven which states the Tenants will allow the Landlord to use the house for at least four weeks of the year.

The Notice is addressed to the Tenants and refers to the rental unit. It is signed and dated by the Landlord. It has an effective date of October 31, 2018. The grounds for the Notice are that the "rental unit will be occupied by the landlord or the landlord's

close family member". The Tenants took no issue with the form or content of the Notice.

The parties agreed the Notice was served on the Tenants in person August 20, 2018.

In response to mostly leading questions by Legal Counsel, the Landlord testified in relation to the grounds for the Notice as follows. Prior to the start of this tenancy, the Landlord would rent the rental unit on a short-term basis when she was not using it. She would use the rental unit every month, sometimes for a week and other times for longer if she was doing repairs at the rental unit. She did not want to rent the rental unit long-term because then she was unable to use it for family when she wanted to.

The Landlord further testified as follows. The Tenant originally approached her about renting the rental unit short-term. The parties then entered into a long-term tenancy agreement. The Landlord included term seven in the tenancy agreement because it was important to her that she be able to use the rental unit in the summer. It was the Tenant who proposed the long-term rental and he acknowledged that the Landlord may still want to use the rental unit during the year and advised that he was willing to vacate during those times.

The Landlord further testified as follows. This year she had reached an agreement with the Tenants about using the rental unit for a period in the summer. She went to the rental unit the day before the Tenants were to vacate to do a pre-arranged inspection. An issue arose in relation to the inspection and she received an email from the Tenants threatening not to leave as arranged. The Landlord submitted this email as evidence. At this point, she realised she no longer had control over her own home and that she could not trust the Tenants to uphold their agreements. She decided she wanted the rental unit back for her own use.

The Landlord testified that she issued the Notice because she wants to take back the rental unit for the use of her and her family so that they can use it when they want to. The Landlord acknowledged having the rental unit listed for short-term rentals while the Tenants were living there. She said they got very few calls about it and would tell the callers it was rented. She testified that the Tenants had told her they were looking to buy property and would be there for one or two years, so she did not see a reason to take the rental advertisement down. She said there are currently no active rental advertisements for the rental unit and that she has no intention of renting it out.

The Tenant disputed that the Landlord intends to use the rental unit for her own use. He said the Landlord will re-rent the unit as a vacation rental. He pointed out that the

Landlord has rented the rental unit as a vacation rental in the past and said this is what she wants to return to. The Tenant testified that the Landlord comes onto the property with "so called friends" who he alleged are actually people wanting to rent the rental unit. His example of this was that prior vacation renters served the One Month Notice on the Tenants. He submitted that the fact that the rental unit was advertised for rent when the Notice was issued is clear evidence of an ulterior motive. He also pointed out that the Landlord only took the rental advertisement down when the Tenants filed the Application.

The Tenant further testified as follows. The Landlord has a cottage on the property which she is entitled to use and occasionally does use. The Landlord constantly interrupts the Tenants at the rental unit stating she needs to come do things at the house. The Landlord springs inspections on them. In March of 2018, the Tenants were told not to use the garden which they were entitled to do. The Landlord comes onto the property without notice. The Landlord clearly has an intense attachment to the property.

The Tenant submitted that the Notice was issued as retaliation and that the Landlord is vindictive and vengeful. He said the Notice is a means to harass the Tenants and intimidate them. He said that it was only because the Tenants demanded respect for their rights that the Landlord issued the Notice. He submitted that the Landlord served the One Month Notice because she knew the Notice was unlawful.

In reply, the Landlord testified that the people who served the One Month Notice on the Tenants were friends and that neither are looking for a vacation rental.

The Landlord called the Witness who was one of the individuals who served the One Month Notice on the Tenants. He testified that he is a friend of the Landlord, has never rented the rental unit and has no desire to rent the rental unit. In response to a question by the Tenant, the Witness acknowledged he was camping in his camper on the property at the time.

The Tenant submitted that the Witness is not the only person who has come onto the property with the Landlord. The Landlord responded that these people were friends or people doing work on the rental unit.

I note that in the Tenants' written submissions they refer to the Landlord not intending to move from her residence on a different island to live in the rental unit as her principal residence.

The Tenants submitted rental ads that were up when the Application was submitted. The Landlord submitted evidence supporting that the second rental ad was not recently listed on the website shown in the screenshot.

In his written submissions, and during the hearing, the Tenant noted that the Tenants are good tenants and that having to vacate the rental unit would cause hardship.

I have fully reviewed all written materials submitted and do not find they add to the above.

Analysis

The Notice was served on the Tenants August 20, 2018 and therefore the new legislation that came into force May 17, 2018 applies.

The Notice was issued under section 49(3) of the *Residential Tenancy Act* (the “*Act*”). The Tenants had 15 days from receiving the Notice to dispute it pursuant to section 49(8)(a) of the *Act*. Based on our records, I find the Tenants filed the Application within the 15-day time limit set out in the *Act*.

Section 49(3) of the *Act* states:

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Pursuant to rule 6.6 of the Rules, the Landlord has the onus to prove the grounds for the Notice. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

The Landlord testified that she wants to take back the rental unit so she and her family can use it when they wish. The Tenants disputed this and submitted that the Landlord wants to use the rental unit as a vacation rental as she did in the past.

I accept that the Landlord wants to take back the rental unit so she and her family can use it when they wish and find the Landlord has proven the Notice on a balance of probabilities as required.

I found the Landlord's testimony credible. None of the submissions or evidence cause me to question the credibility of the Landlord.

The Tenant focused on the poor landlord-tenant relationship that has developed. The Tenant submitted that the Landlord constantly breaches their rights as tenants and that the Notice is just another example of this.

I did not find the Landlord to dispute that a poor landlord-tenant relationship has developed. In fact, I understood her to say this was one of the reasons she no longer wanted to rent the rental unit. I found much of what the Tenant said to actually support the Landlord's position. The Tenant described the Landlord as someone who would come onto the property as she pleased and would come to the rental unit without notice to do things around the rental unit. He acknowledged that the Landlord has an intense attachment to the rental unit.

The Tenant painted a picture of a landlord who wants to come and go as they please into what they consider to be their home. This is exactly the reason the Landlord wishes to end the tenancy. Although the Landlord's actions may not accord with the rights of tenants under the *Act*, they do not call into question the grounds for the Notice.

The Tenant pointed out that the Notice was issued only when the Tenants sought to protect their rights under the *Act*. However, it is also clear from the evidence that the Notice was issued after the Tenants threatened not to vacate the rental unit as promised unless the Landlord met certain conditions. The timing of the Notice is consistent with what the Landlord has said which is that this occurrence made her realise she no longer wished to be a landlord and that she wanted to regain control over her home. In my view, landlords are entitled to decide they no longer wish to be landlords and are then entitled to end a tenancy for their own use of the rental unit. I note that there is no requirement that the Landlord use the rental unit as her principal residence.

In relation to the rental ads submitted by the Tenants, I note there is no date on these screenshots. There is only the Tenants' typed indication of the date above the screen shot. I have reviewed the ads, I do not see anything in them that would suggest they were posted recently or that the Landlord is looking for bookings in the coming months or year. They appear to be generic ads and are consistent with what the Landlord has stated in relation to them being posted since the rental unit was used as a vacation rental.

I do not accept that the rental ads indicate the Landlord is acting in bad faith. I accept the evidence submitted by the Landlord that one of the rental ads should not have been up as she had not done business with the website for years. Further, I accept the testimony of the Landlord that the second rental ad was up throughout the tenancy. The Tenants did not dispute this.

Clearly the Landlord did not intend to rent the rental unit out to vacationers during this fixed term tenancy running from March 2, 2017 to March 2, 2018. If the ad did not indicate an intent to rent the rental unit to vacationers during the fixed term tenancy, I cannot see how the same ad indicates an intention to do so now. I accept that the Landlord simply left the ad up from the previous days of renting the rental unit to vacationers and I do not find this calls into question the intent of the Landlord.

I do not accept that the Landlord has been showing the rental unit to potential vacationers. The Tenants submitted no evidence to support this claim. The Tenants seem to take the position that the people are vacationers because they do not know them. Considering all of the evidence before me, the Landlord's explanation that these people were friends seems logical. I do not accept that they must have been clients just because the Tenants did not know who they were. Further, the Tenant claimed it was clients that served the One Month Notice on the Tenants. This submission does not accord with common sense. It is not logical that the Landlord would recruit clients and potential renters to serve a notice to end tenancy on current tenants. The logical explanation is that these people were friends. This is what the Landlord stated. This was supported by the testimony of the Witness.

I find the testimony of the Landlord that she wishes to have the rental unit back for her own use is supported by the fact that the rental unit was previously only rented on a short-term basis to allow her to use it, that the tenancy agreement includes term seven which ensured the Landlord's ability to continue using the rental unit and that the Landlord did continue to use the rental unit during the tenancy.

I do not accept that the issuance of the One Month Notice calls into question the Landlord's motive. The Landlord was entitled to issue more than one notice to end tenancy. I agree it is clear the Landlord wants the Tenants out of the rental unit. However, this is in accordance with what the Landlord has stated.

I note that whether the Tenants are good tenants or not is irrelevant to the matter before me. If the Landlord wishes to have her home back for her own use she is entitled to

take it back whether the Tenants are good tenants or not. Further, hardship to the Tenants is not a factor in the analysis.

Considering all of the submissions and evidence, I accept the Landlord's testimony in relation to her intended use of the rental unit.

I have reviewed the Notice and find it complies in form and content with section 52 of the *Act* as required by section 49(7) of the *Act*. The Tenants did not dispute this.

I find the effective date of October 31, 2018 as indicated on the Notice complies with section 49(2)(a) of the *Act* given the testimony of the parties.

I uphold the Notice and dismiss the Application without leave to re-apply.

Section 55(1) of the *Act* requires me to issue the Landlord an Order of Possession given I have upheld the Notice, dismissed the Application to dispute the Notice and found the Notice complies with section 52 of the *Act*. The Landlord asked that the Order of Possession be effective October 31, 2018 if issued based on the Notice. In my view, the Landlord is entitled to an Order of Possession as of the effective date of the Notice given it complies with the *Act*. I grant the Landlord an Order of Possession effective October 31, 2018.

I note that the Tenants are entitled to receive the equivalent of one month's rent payable under the tenancy agreement pursuant to section 51(1) of the *Act* if this has not already been addressed.

I also note that, if the Landlord does not follow through with the stated purpose of the Notice, the Tenants can apply for the equivalent of 12 month's rent payable under the tenancy agreement pursuant to section 51(2) of the *Act*.

I decline to award the Tenants reimbursement for the filing fee given they were not successful in this application.

I told the parties we would reconvene for the dispute of the One Month Notice if necessary. This is not necessary as I have issued an Order of Possession based on the Notice and therefore the dispute of the One Month Notice is a moot point.

Further, the requests for an order to suspend or set conditions on the Landlord's right to enter the rental unit and for an order that the Landlord comply with the *Act*, regulation

and/or the tenancy agreement are no longer an issue given the tenancy is ending October 31, 2018. I dismiss these requests without leave to re-apply.

Conclusion

The Notice is upheld and the Landlord is issued an Order of Possession. I decline to award the Tenants reimbursement for the filing fee. The remaining issues raised in the Application are moot points.

The Landlord is granted an Order of Possession effective October 31, 2018. This Order must be served on the Tenants and, if the Tenants do not comply with this Order, it may be filed and enforced in the Supreme Court as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: October 15, 2018

Residential Tenancy Branch