



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC

Introduction

This decision is in respect of the tenant's application for dispute resolution made on September 7, 2018, under the *Residential Tenancy Act* (the "Act"). The tenant seeks the following remedies under the Act:

1. an order cancelling a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice"); and,
2. an order for the landlord to comply with the Act, the regulations, or the tenancy agreement.

A dispute resolution hearing was convened at 9:30 a.m. on October 19, 2018, and the landlord, the tenant, and the tenant's advocate attended, were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. The parties did not raise any issues in respect of service of documents.

While I have reviewed all oral and documentary evidence submitted that met the requirements of the *Rules of Procedure* and to which I was referred, only evidence relevant to the issue of this application is considered in my decision.

I note that section 55 of the Act requires that when a tenant applies for dispute resolution seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the application is dismissed and the landlord's notice to end tenancy complies with the Act.

Preliminary Issue: Tenant's Application for an Order for Landlord to Comply

After significant testimony from the tenant (and the landlord) regarding cattle and turkeys being let loose, and issues arising therefrom, the tenant confirmed that the cattle are now gone, and the turkeys are properly contained. The tenant's application for an order that the landlord

comply with the Act has essentially become a moot point and is no longer an issue, and the tenant confirmed that she no longer seeks such an order.

As such, I dismiss this aspect of the tenant's application without leave to reapply.

While I will not go into detail regarding the cattle issues testified to during the hearing, I will refer to them where necessary for context in relation to the Notice.

Issue to be Decided

Is the tenant entitled to an order cancelling the Notice?

Background and Evidence

The landlord testified that he issued the Notice because he will be moving into the rental unit, a small cabin. The cabin is located on a farm property, and on this property, there is also a house in which the landlord resides.

He plans on moving into the rental unit because his son, daughter-in-law, and child, will move into the house; his son recently got a job nearby in the logging industry. The property included (at the time of the application) many cattle, turkeys, and chickens.

Regarding the Notice, he served it on September 1, 2018, with an (incorrect) vacate date of the same day. He testified that he was later made aware of the error by the tenant. On page 2 of the Notice, a copy of which was entered into evidence, the reason for the Notice being issued is that "The rental unit will be occupied by the landlord or the landlord's close family member".

The tenant testified that she has lived in the rental unit since July 1, 2016, and that rent is \$775.00, which is due on the first of the month. The tenant then testified that the Notice was issued by the landlord in response to her sending him a "breach letter," in which she sought the landlord's compliance in properly fencing in the cattle. The cattle were being left to roam around the rental unit, defecating nearby and kicking the tenant's car, setting off the car alarm in the early morning hours on several occasions.

This breach letter was sent by the tenant to the landlord on September 1, 2018 and was submitted into evidence. Within 45 minutes of the letter being sent, the landlord responded to the tenant by text message, indicating that rent would increase on December 1, 2018.

The tenant noted that the parties had an ongoing, off-and-on communication regarding the cattle issue, and that it quickly escalated to the landlord issuing the Notice within a few hours of the texts.

Regarding the landlord's son moving in, the tenant submits that this is fabricated, and further

submits: why would the landlord notify her about a rent increase on the same day as her breach letter was sent, and then issue the Notice on the same day?

In response, the landlord stated that he is not lying, and that he is “totally moving in.” Regarding the timing of the Notice, the landlord testified that he has been considering moving into the rental unit for some time, and that this was accelerated by the son obtaining nearby employment at the beginning of August 2018.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Where a tenant applies to dispute a Two Month Notice to End Tenancy for Landlord’s Use of Property, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the Notice is based.

In this case, the landlord testified, and the Notice reflected, that the Notice was issued under section 49(1) of the Act which states that “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.”

The landlord testified that he intends to move into the rental unit. The tenant argues that this ground is fabricated, and that the only reason why the Notice was issued was in retaliation for her sending the landlord the breach letter. In other words, the tenant has raised the issue of whether the Notice was issued in good faith.

Section 49(3) of the Act states that

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.

“Good faith” is an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage. (See pages 1 and 2 of *Residential Policy Guideline 2. Good Faith Requirement when Ending a Tenancy*.) Moreover, a claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice.

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. The landlord must 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.

Based on the testimony of the tenant, along with the documentary evidence submitted, I find that the timing of the issuing of the Notice to raise serious doubts as to it being issued in good faith. While the landlord may indeed have been thinking about moving into the rental unit for some time, but the chain of events leading from a breach letter, to a text sent 45 minutes later about a rent increase, followed within hours by the issuing of a Notice, raises a very real, very strong inference that the Notice was issued with an ulterior motive beyond a good faith intention of the landlord to occupy the rental unit.

As such, taking into consideration all the oral testimony and the documentary evidence presented before me, I do not find that the landlord has proven on a balance of probabilities that he intends for either himself or a close family member to occupy the rental unit and that the Notice was issued in good faith.

Given the above, the Notice, dated September 1, 2018, is hereby cancelled and of no force or effect. The landlord is not entitled to an order of possession under section 55 of the Act. This tenancy will continue until it is ended in accordance with the Act

Conclusion

I hereby grant the tenant an order cancelling the Notice, dated September 1, 2018. The tenancy will continue until it 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 Act.

Dated: October 19, 2018

Residential Tenancy Branch