



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, ERP, LRE, OLC

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on August 10, 2018 (the “Application”). The Tenant applied to dispute a Two Month Notice to End Tenancy for Landlord’s Use of Property dated July 31, 2018 (the “Notice”). The Tenant also sought the following: an order that the Landlord make emergency repairs; an order suspending or setting conditions on the Landlord’s right to enter the rental unit; and an order that the Landlord comply with the *Residential Tenancy Act* (the “Act”), *Residential Tenancy Regulation* (the “Regulations”) or the tenancy agreement.

The Tenant appeared at the hearing with B.B. The Landlord appeared at the hearing.

Pursuant to rule 2.3 of the Rules of Procedure (the “Rules”), I told the Tenant I would not consider the request for an order that the Landlord make emergency repairs or an order suspending or setting conditions on the Landlord’s right to enter the rental unit as these matters were unrelated to the main issue before me being the dispute of the Notice. I dismiss these requests with leave to re-apply. This does not extend any time limits set out in the *Act*.

The Tenant confirmed that the request for an order that the Landlord comply with the *Act*, *Regulations* or the tenancy agreement raises the same issue as the dispute of the Notice.

The Landlord advised at the outset that he was recording the hearing. I told the Landlord the Rules prohibited him from doing so and that he was not to do so. The Landlord should refer to rule 6.11 of the Rules in this regard.

I explained the hearing process to the parties who did not have questions when asked. The Tenant and B.B. provided affirmed testimony. The Landlord would not answer when read the affirmation numerous times. The Landlord did promise to tell the truth.

The Tenant had submitted evidence prior to the hearing. The Landlord had not submitted evidence. I addressed service of the hearing package and Tenant's evidence.

The Landlord confirmed he received the hearing package and raised no issues in this regard. The Landlord said that he did not receive any of the Tenant's evidence.

The Tenant testified that she sent two packages of evidence to the Landlord. She said the first package of evidence was with the hearing package. She testified that the second package of evidence was sent to the Landlord at the same address as the first package by registered mail on September 6, 2018. She provided Tracking Number 1 which I looked up on the Canada Post website with permission. The website shows the package was unclaimed.

It is the Tenant who must satisfy me that her evidence was served on the Landlord in accordance with the *Act* and Rules. I cannot be satisfied that the Tenant's evidence was served on the Landlord given the conflicting evidence on this point and the lack of evidence to support the Tenant's position. I acknowledge that the Landlord is not permitted to avoid service by failing to pick up packages sent by registered mail. However, the Tenant did not submit any evidence to me to support her testimony that the second package of evidence was sent to the correct address for the Landlord. In the circumstances, I cannot be satisfied that it was and cannot deem the evidence received by the Landlord. The Tenant's evidence is excluded given I am not satisfied she complied with rule 3.14 of the Rules. I do however admit the copy of the Notice given this is a document served on the Tenant by the Landlord and therefore a document the Landlord is aware of regardless of service.

The parties were given an opportunity to present relevant oral evidence, make relevant submissions and ask relevant questions. I have considered all 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?

Background and Evidence

The Tenant testified that there is a verbal tenancy agreement between herself and the Landlord. She said the Landlord promised to do a written tenancy agreement but never did. The Landlord agreed there is a verbal tenancy agreement but said the Tenant was the one who did not want any paperwork.

Both parties agreed the tenancy agreement is between the Landlord, the Tenant and B.B. in relation to the rental unit. The parties agreed the tenancy started December 1, 2017. The Tenant and B.B. testified that the Landlord promised them the tenancy would be one year. The Landlord said he did not promise the Tenant and B.B. that they could stay a year and that it is a month-to-month tenancy.

Both parties agreed rent is \$1,650.00 per month due on the first day of each month.

The Notice is addressed to the Tenant and refers to the rental unit. It is signed and dated July 31, 2018 by the Landlord's wife. It has an effective date of September 30, 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 Tenant took no issue with the form or content of the Notice.

The Landlord said his wife served the Notice on the Tenant personally on July 31, 2018. The Tenant agreed with this.

In relation to the grounds for the Notice, the Landlord said he and his family are moving into the rental unit as soon as the Tenant vacates. He said he plans to renovate it for him and his family. He said his family is currently living in a rental and their lease is going to be up next year. He said mortgage rates are high and rental prices are high, so he wants to move back into the house.

The Tenant submitted that the Landlord is not telling the truth. She testified that the Landlord came to the rental unit and said he is going to renovate it and raise the rent to \$3,500.00 per month. She said she asked if her and B.B. could stay in the rental unit and the Landlord said no.

B.B. testified that the Landlord came to the rental unit more than once and told B.B. he was going to put \$50,000.00 into the rental unit and re-rent it for \$3,500.00. He said the Landlord once came with his family and they looked through the rental unit at what they were going to renovate.

In reply, the Landlord said he never told the Tenant or B.B. that he was going to re-rent the rental unit.

Analysis

The Notice was served on the Tenant July 31, 2018 and therefore the new legislation that came into force May 17, 2018 applies.

The Notice was issued under section 49(3) of the *Act*. The Tenant had 15 days to dispute the Notice pursuant to section 49(8)(a) of the *Act*. I find the Tenant 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 Landlord testified that he and his family are going to move into the rental unit once the Tenant vacates. The Tenant disputed that this is the plan. The Tenant and B.B. took the position that the Landlord is not telling the truth based on discussions had where the Landlord told them he was going to renovate the rental unit and re-rent it for a higher rent amount. The Landlord denied these discussions occurred. I have no extrinsic evidence before me to support that the discussions did occur. In the circumstances, I am not satisfied that they did occur.

I accept the testimony of the Landlord that he and his family are going to move into the rental unit. There is nothing before me that causes me to question the Landlord's testimony on this point. I am satisfied the Landlord has proven the grounds for the Notice.

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*.

Section 49(2)(a) of the *Act* addresses the effective date of a notice issued pursuant to section 49(3) of the *Act* and states:

(2) Subject to section 51...a landlord may end a tenancy

(a) for a purpose referred to in subsection (3)...by giving notice to end the tenancy effective on a date that must be

(i) not earlier than 2 months after the date the tenant receives the notice,

(ii) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and

(iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy, or

The parties disagreed on whether this was a fixed term tenancy or month-to-month tenancy. The Landlord said it was a month-to-month tenancy and the Tenant said it was for a fixed term of one year. There was no written tenancy agreement. I have no evidence before me to support the position that this is a fixed term tenancy and therefore I accept that it is a month-to-month tenancy.

I find the effective date of September 30, 2018 as indicated on the Notice complies with section 49(2)(a) of the *Act*.

I uphold the Notice and dismiss the Tenant's application to dispute the Notice.

Section 55(1) of the *Act* requires me to issue the Landlord an Order of Possession given I have upheld the Notice, dismissed the Tenant's application to dispute the Notice and found the Notice complies with section 52 of the *Act*.

The Landlord agreed that if I issued an Order of Possession it could be effective October 31, 2018 and therefore I grant the Landlord an Order of Possession with this effective date.

I note that the Tenant is entitled to receive the equivalent of one month's rent payable under the tenancy agreement pursuant to section 51(1) of the *Act*.

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

Conclusion

The dispute of the Notice and request for an order that the Landlord comply with the *Act*, *Regulations* or tenancy agreement are dismissed without leave to re-apply.

The request for an order that the Landlord make emergency repairs and an order suspending or setting conditions on the Landlord's right to enter the rental unit are dismissed with leave to re-apply. This does not extend any time limits set out in the *Act*.

The Landlord is granted an Order of Possession effective October 31, 2018. This Order must be served on the Tenant and, if the Tenant does not comply with this Order, it may be filed and enforced in the Supreme Court as an order of that Court. I also note that the Order applies equally to B.B.

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: September 28, 2018

Residential Tenancy Branch