



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Luxmore Realty
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, OLC, FF

Introduction

This hearing was convened in response to an application by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 49;
2. An Order for the Landlord’s compliance - Section 62; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlords and Tenants were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Are the Tenants entitled to a cancellation of the notice to end tenancy?

Are the Tenants entitled to an order that the Landlord comply?

Are the Tenants entitled to recovery of the filing fee?

Background and Evidence

The following are agreed facts: The tenancy started on July 1, 2017. Rent of \$3,250.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$1,625.00 as a security deposit. In a previous decision dated July 19, 2018 the Tenants were granted an order cancelling a two month notice to end tenancy for landlord’s use. The Decision notes that the stated reason for the notice to end tenancy and the evidence given at the hearing by the Landlord was that the owners intended to

move into the unit. On July 24, 2018 the Tenants were given another two month notice to end tenancy for landlord's use dated July 22, 2018 (the Notice") with the same stated reason as the previous notice to end tenancy.

The Landlord states that none of the circumstances have changed since the last hearing and previous decision except that now the owner is being forceful about their rights. The Landlord states that the owners are determined to move into the unit. The Landlord states that no school arrangements have been made for the owner's children to attend school in the area of the rental unit. The Landlord states that the previous decision is unfair and that if the Landlord is not successful with this Notice the Landlord will pursue legal advice. The Landlord states that if that should have to happen then the Landlord will not be offering any compensation to the Tenants to move out by mutual agreement. It is noted that the Landlord wished to pursue a settlement agreement on this dispute while at the hearing however the Tenant was not agreeable to settling the dispute with the Landlord.

The Tenant states that the Landlord has indicated to the Tenants that if the Landlord is not successful with this Notice the Landlord will serve another notice to end tenancy for landlord's use. The Tenant states that the Landlord is making threats and that the Tenants simply want to carry on with living in their home without the stress of having to deal with additional notices to end the tenancy. The Tenant states that they were not able to plant a garden this year due to the Landlord's actions in trying to end the tenancy and that this, among other things, is making their lives and their enjoyment of their home difficult. The Tenant seeks an order that the Landlord comply with the Act by not serving baseless notices to end tenancy for landlord's use.

Analysis

Section 77(3) of the Act provides that a decision or an order is final and binding on the parties. The legal principle of ***Res judicata*** prevents a party from pursuing a claim that has already been decided. Where a disputed matter is identical to or substantially the

same as the earlier disputed matter, the application of res judicata operates to preserve the effect of the first decision or determination of the matter. The previous notice to end tenancy for landlord's use and the current Notice contain the same stated reason. The previous notice was cancelled in the previous decision. Given the Landlord's evidence that none of the circumstances have changed in the few days between the previous decision and the service of the Notice I find that the Landlord is attempting to pursue the end of the tenancy for the same reason and on the same evidence that has already been decided. As the previous decision is final and binding on the Parties and as the matter of the owner's stated intent to occupy the unit has already been determined to be invalid I find that the Notice is not valid and that the Tenants are entitled to its cancellation. The tenancy continues.

Section 62(3) of the Act provides that the director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies. This is now the second notice to end tenancy that has been cancelled. Given the Tenant's evidence that the Landlord intends to serve another notice to end tenancy for landlord's use and the Landlord's evidence that the owners will be forceful in ending the tenancy I accept that the Landlord may very well serve another notice to end tenancy for landlord's use. I find therefore that the Tenants is entitled to an order for compliance and I order the Landlord to refrain from serving notices to end tenancy that have no merit, are baseless or carry the same stated reason based on the same circumstances that have already been decided.

Section 28 of the Act provides that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy and freedom from unreasonable disturbance. Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Should the Landlord serve another notice to end tenancy contrary to the Order above the Tenant has leave to

reapply for compensation in relation to this Notice. The Tenants remain at liberty to seek compensation for being given any additional notices to end tenancy for landlord's use that are baseless and result in a loss of quiet enjoyment of the unit.

As the Tenants have been successful with its claims I find that the Tenant is entitled to recovery of the \$100.00 filing fee and the Tenant may deduct this from future rent payable.

Conclusion

The Notice is cancelled and the tenancy continues. The Landlord is ordered to stop giving the Tenants notices to end tenancy that have no merit, are baseless, or carry the same stated reason based on the same circumstances that have already been decided.

I grant the Tenant an order under Section 67 of the Act for **\$100.00**. If necessary, this order may be filed in the Small Claims Court and enforced 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 *Residential Tenancy Act*.

Dated: September 20, 2018

Residential Tenancy Branch