



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes LRE OLC RP RR MNDC CNC FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution made on September 18, 2018, as amended by an Amendment to an Application for Dispute Resolution received at the Residential Tenancy Branch on September 29, 2018 (the "Application"). The Tenant applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"):

- an order suspending or setting conditions on the Landlord's right to enter the rental unit;
- an order that the Landlord comply with the *Act*, regulations, and/or the tenancy agreement;
- an order requiring the Landlord to make repairs to the unit, site, or property;
- an order reducing rent for repairs, services or facilities agreed upon but not provided;
- a monetary order for money owed or compensation for damage or loss;
- an order cancelling a One Month Notice to End Tenancy for Cause, dated September 26, 2018 (the "One Month Notice"); and
- an order granting recovery of the filing fee.

The Tenant and the Landlord attended the hearing on their own behalves, and provided affirmed testimony. Neither party raised any issues with respect to service or receipt of the documents and evidence to be relied upon during the hearing. Pursuant to section 71 of the *Act*, I find the documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure, and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

Residential Tenancy Branch Rule of Procedure 2.3 permits an arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. The most important issue to address is whether or not the tenancy will continue. Accordingly, I find it appropriate to exercise my discretion to dismiss all but the Tenant's request for an order cancelling the One Month Notice. The Tenant is granted leave to reapply for the remainder of the relief sought, as appropriate.

Issues to be Decided

1. Is the Tenant entitled to an order cancelling the One Month Notice?
2. Is the Tenant entitled to an order granting recovery of the filing fee?

Background and Evidence

A copy of the fixed-term tenancy agreement was submitted into evidence. It confirmed the tenancy began on September 1, 2017, and is expected to continue until August 31, 2020. During the tenancy, rent in the amount of \$1,500.00 per month is due on the first day of each month. The Tenant did not pay a security deposit or a pet damage deposit.

The Landlord purchased the property from the Tenant and rented it back to her. As indicated in a Contract of Purchase and Sale, dated August 15, 2017 (the "CPS"), the Tenant was to rent "the big house" and permitted the Landlord to access the "lower area" for his own purposes. The tenancy agreement indicates the Landlord can access this area for "maintenance + storage", with the exception of the residences. In addition to the land use agreement as reflected in the CPS and the tenancy agreement, the Tenant agreed the Landlord could also use a more convenient location, near an area referred to during the hearing as the "riding ring". The Landlord advised that he intends to sell another property and store more of his belongings on the property as agreed. A copy of the CPS was submitted into evidence.

The Tenant's expectations appear to differ from the Landlord's. She stated she wishes to be left alone to farm the property as she has done for many years. She described farming practices that have not changed with the transfer of ownership or during the tenancy. The Tenant indicated she did not mind when the Landlord attended the property less frequently at the beginning of the tenancy, but that his attendance has increased in recent months.

The Landlord wishes to end the tenancy. Accordingly, he issued the One Month Notice. The Tenant's amendment and testimony confirms receipt of the One Month Notice on September 29, 2018.

The One Month Notice was issued on the following bases:

- Tenant is repeatedly late paying rent.
- Tenant has allowed an unreasonable number of occupants in the unit/site.
- Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord.
- Tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Landlord testified the Tenant has an unreasonable number of occupants on the rental property. He estimated there are 6-8 farm workers living on the property. The Landlord has also observed a camper and a recreational vehicle parked on the property. The Landlord is particularly concerned about the impact on the septic system.

In reply, the Tenant acknowledged there are currently 8 people living on the rental property, but testified there have been up to 13 occupants on the rental property. In addition to the Tenant has her family, these individuals are primarily related to the Tenant's farming activities. With respect to the Landlord's concerns about stress on the septic system, the Tenant testified that a technician recently attended to inspect the septic system which she had installed and was advised that it is not being used to capacity. No report was submitted into evidence.

Analysis

In light of the oral and documentary evidence, and on a balance of probabilities, I find:

Section 47 of the *Act* permits a landlord for the reasons enumerated therein. In this case, the Landlord seeks to end the tenancy on several bases, including an unreasonable number of occupants on the property. I find the Tenant has permitted an unreasonable number of occupants on the rental property. As noted above, she testified there are currently 8 occupants at the rental property, but there have been up to 13 occupants. However, on review of the tenancy agreement, the Landlord agreed to rent "the big house" to the Tenant. Only the Tenant's name appears on the tenancy agreement, and there is no reference to an ongoing farming operation or the presence

of 8 or more occupants. As a result, I find the Tenant's request for an order that the One Month Notice be cancelled is dismissed, without leave to reapply.

When a tenant's application to cancel a notice to end tenancy is dismissed and the notice complies with section 52 of the *Act*, section 55 of the *Act* requires that I grant an order of possession to a landlord. The language in the *Act* is mandatory. Having reviewed the One Month Notice submitted into evidence, I find it complied with section 52 of the *Act*. Accordingly, I find the Landlord is entitled to an order of possession, which will be effective on November 30, 2018, at 1:00 p.m.

In light of my findings above, it has not been necessary for me to consider the additional bases indicated on the One Month Notice, although I note the Tenant acknowledged rent was paid late on October 1 and November 1, 2017, and on January 1, 2018, contrary to section 26 of the *Act*.

Conclusion

Subject to the exercise of my discretion under *Preliminary and Procedural Matters*, above, the Tenant's Application is dismissed, without leave to reapply. Pursuant to section 55 of the *Act*, the Landlord is granted an order of possession, which will be effective on November 30, 2018, at 1:00 p.m.

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: November 5, 2018

Residential Tenancy Branch