Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, FFT

Introduction

This hearing dealt with the tenants' Application for Dispute Resolution (the Application) pursuant to the *Residential Tenancy Act* ("the *Act*") for:

- cancellation of the landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the Two Month Notice) pursuant to section 49;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord and the tenants attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Tenant K.G. (the tenant) indicated that they would be the primary speaker for the tenants.

While I have turned my mind to all the documentary evidence, including the testimony of both parties, only the relevant details of the respective submissions and/or arguments are reproduced here.

The landlord acknowledged receipt of the Application and an evidentiary package which were sent to him by way of registered mail on October 03, 2018. In accordance with sections 88 and 89 of the *Act*, I find that the landlord is duly served with the Application and evidence.

The landlord submitted that that they provided their evidence to the Residential Tenancy Branch but did not provide any evidence to the tenants.

Rule 3.15 of the Residential Tenancy Branch Rules of Procedure states that documentary evidence that is intended to be relied on at the hearing by the respondent

must be received by the applicant not less than 7 days before the hearing. I find that the landlord did not serve the tenants with their evidence and that the tenants may be prejudiced by this as they did not have a chance to respond to the landlord's evidence. For this reason the landlord's evidence is not accepted for consideration.

The tenant confirmed that they received the Two Month Notice on October 01, 2018, which was sent to them by registered mail on September 29, 2018. In accordance with section 88 of the *Act,* I find that the tenants were duly served with the Two Month Notice on October 01, 2018.

Issue(s) to be Decided

Should the Two Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Are the tenants entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

Written evidence was provided by the tenants that this tenancy commenced on May 01, 2015, with a current monthly rent in the amount of $1,882.40, due on the first day of each month and a security deposit in the amount of $905.00. The tenancy agreement indicates that there are two parking spots included with the monthly rent.

A copy of the landlord's signed September 29, 2018, Two Month Notice was entered into evidence. In the Two Month Notice, requiring the tenants to end this tenancy by November 30, 2018, the landlord cited the following reason:

> *The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).*

The tenants entered into written evidence:

- A copy of a text message from the landlord to Tenant V.L. dated April 14, 2018, in which the landlord indicates that an offer for the tenants to accept a

new monthly rent amount of $2,100.00 will expire at the end of the month. The landlord suggests that if the tenants do not accept the offer, the landlord will take the rental unit back for his daughter;

- A copy of a letter from the landlord to the tenants dated August 27, 2018, in which the landlord states that they are taking back a parking lot as of October 01, 2018, and instructing the tenants to reduce the amount of monthly rent paid by $60.00 effective as of October 01, 2018;
- A copy of a text message from the landlord to Tenant V.L. dated September 13, 2018, in which the landlord asks whether they have talked to Tenant K.G. about a conversation between Tenant V.L. and the landlord; and
- A copy of a text message from Tenant V.L. to the landlord dated September 13, 2018, in which Tenant V.L. states that the tenants reject the landlord's verbal offer of paying increased rent, which was proposed during an inspection, and that the tenants have accepted the legal rent increase which cannot be increased again for 12 months starting from October 1, 2018.

The landlord testified that his daughter and her family are currently living in the basement of the landlord's house with only one bedroom. The landlord submitted that they need the rental unit for his daughter and their kids so that they have more room. The landlord admitted that the rent for the rental unit is below market value and that they have requested for the tenants to pay more rent.

The tenant submitted that the landlord has been trying to extort them for more money based on the threat of being given a Two Month Notice for the landlord's daughter to move into the rental unit. The tenant stated that the landlord initially wanted to increase the rent to $2,200.00 and then reduced the amount to $2,100.00 as shown in the text messages provided in evidence.

The tenant testified that the landlord gave notice by registered mail to inspect the rental unit in September 2018 and used the opportunity to propose a new rent amount once again for the tenants. The tenant submitted that the landlord again stated that if the offer was not accepted, the landlord would take the rental unit back for his daughter. The tenant stated that they felt that the landlord having used the inspection as an opportunity to propose a new rent amount was in violation of the Act.

The tenant submitted that they were given a letter from the landlord indicating that the landlord was terminating the agreement for one of the parking spaces provided as a part of the tenancy agreement. The tenant confirmed that the landlord reduced the rent

by $60.00 for the termination of the tenants' use of one the two parking spaces included in the agreement. Tenant K.L. stated that she was informed by an Information Officer that the landlord could not take away the parking space.

Analysis

Section 49 of the *Act* allows a landlord to end a tenancy if the landlord or a close family member is going to occupy the rental unit and provides that, upon receipt of a Notice to End Tenancy for Landlord's Use of Property, the tenant may dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch within 15 days. If the tenant files an application to dispute the notice, the landlord bears the burden to prove that the Two Month Notice was issued to the tenant in good faith and truly intends on doing what they said they would do on the Two Month Notice.

As the tenant disputed this notice on October 01, 2018, and since I have found that the Two Month Notice was served to the tenants on October 01, 2018, I find the tenants have applied to dispute the Two Month Notice within the time frame provided by section 49 of the *Act*.

RTB Policy Guideline #2 establishes that good faith is a legal concept and means that a party is acting honestly when doing what they say they are going to do or what they are required to do under the legislation or tenancy agreement. The Guideline goes on to say that if evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive then the question as to whether the landlord had a dishonest purpose is raised.

When the good faith intent of the landlord is called into question, the burden rests with the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The Guideline requires the landlord to establish that they do not have another purpose that negates the honesty of intent or demonstrates they do not have an ulterior motive for ending the tenancy.

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

In the case before me, having reviewed the evidence and testimony, I find that the landlord has failed to provide any documentary evidence to corroborate their submission that the rental unit is going to be occupied by the landlord's daughter which can be considered. Even if the landlord submitted evidence to prove that their daughter

is going to occupy the rental unit, I find that the landlord has not issued the September 29, 2018, Two Month Notice to the tenants in good faith as I find that the landlord has an ulterior motive for seeking to end the tenancy.

I find that the landlord did not dispute that they are seeking increased rent for the rental unit as they believe the amount of rent for the rental unit is below current market value. I find that the landlord did not dispute the text messages exchanged in April 2018, or the conversation that occurred in September 2018, in which the landlord suggested to the tenants that, if they did not accept a rent increase in the amount of $2,100.00, the landlord would issue a Two Month Notice and evict the tenants.

If the landlord truly intends for their daughter to occupy the rental unit, I find that the landlord's multiple requests for increased rent and the threat of the Two Month Notice negates the honesty of the landlord's intentions. I find that the landlord has an ulterior motive, which is to obtain an increased amount of monthly rent higher than the amount that they are legally allowed to increase it with the current tenancy agreement in place with the tenants.

For the above reasons, I find that the landlord has not issued the Two Month Notice to the tenants in good faith. Therefore, the Two Month Notice dated September 29, 2018, is set aside and this tenancy will continue until ended in accordance with the *Act*.

Section 29 of the Act allows for the landlord to inspect the rental unit once a month as long as they give the tenants written notice, at least 24 hours and not more than 30 days, before the entry and which indicates the reasonable purpose for entering the rental unit as well as the date and time of the entry.

Having reviewed the above evidence and testimony, I find that the tenants have not demonstrated that that landlord is in violation of the Act regarding the inspection of the rental unit. I find that the landlord inspected the rental unit once in September 2018, after providing written notice to the tenants in accordance with the Act. Although section 28 of the Act protects the tenants' right to quiet enjoyment, I do not find that the landlord breached the Act by engaging in a conversation about rent with the tenants. If the tenants had rejected the conversation and the landlord insisted in a forceful manner, I may have considered that to be unreasonable but there is no evidence or testimony which indicates that this is what occurred.

Section 27 of the Act establishes that a landlord may terminate or restrict a service or facility, that is not a material term or is essential to the tenants' use of the rental unit as living accommodation, if they give 30 days' notice in the approved form and reduce the rent in an amount that is equivalent to the reduction in value of the tenancy.

Residential Tenancy Policy Guideline # 22 states:

> *A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement. Even if a service or facility is not essential to the tenant's use of the rental unit as living accommodation, provision of that service or facility may be a material term of the tenancy agreement. When considering if a term is a material term and goes to the root of the agreement, an arbitrator will consider the facts and circumstances surrounding the creation of the tenancy agreement. It is entirely possible that the same term may be material in one agreement and not material in another.*

Having reviewed the evidence, testimony and the above, I find that the termination of one parking space facility is not a material term of the tenancy agreement as the tenancy can continue on indefinitely without one of the parking stalls. If the tenants need another parking stall, they can acquire it externally. I find that there is no evidence or testimony which indicates that one parking stall is essential to the use of the rental unit as living accommodation.

I find that the landlord is within their right to terminate a facility in the form of one parking space; however, I find that the letter provided to the tenants is not on the approved form and is not in compliance with the Act.

For the above reason I find that the landlord has not complied with the Act regarding their notification to the tenants for the termination of a parking space as a part of the tenancy agreement. Therefore, I find that the tenants have the right to keep the parking space until the landlord serves the approved form to the tenants in accordance with the *Act,* which gives at least 30 days' notice until the effective date.

As the tenants have been successful in cancelling the Two Month Notice and having the landlord comply with the Act, I allow them to recover their filing fee from the landlord.

Conclusion

The Two Month Notice dated September 29, 2018, is cancelled and of no force or effect.

This tenancy will continue until it is ended in accordance with the *Act*.

Pursuant to section 72 of the *Act,* I order that the tenants may reduce the amount of rent paid to the landlord from a future rent payment on one occasion, in the amount of $100.00, to recover the filing fee for this application.

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 14, 2018

Residential Tenancy Branch