



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNL FF OPL MNDCL MNRL

Introduction

Both parties and witnesses attended the hearing and gave sworn testimony. They confirmed the Notice to End Tenancy dated August 15, 2018 to be effective November 1, 2018 was personally served on August 16, 2018. The effective date on the Notice is automatically corrected to October 31, 2018 pursuant to section 53 of the *Residential Tenancy Act* as a Notice to End Tenancy for landlord's use of the property must give a full two months' notice and end the tenancy on the day before the day in the month that rent is payable under the tenancy agreement according to section 45 (1) (b). The tenant gave evidence that they served the Application for Dispute Resolution by registered mail and the landlord said they served their Application personally. Both parties acknowledged receipt. I find the documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing.

This is a Review Hearing as the tenant proved they were unable to attend the original hearing on October 16, 2018 at 11 a.m. due to a telephone problem beyond their control. The tenant was granted a Review Hearing at this time. The landlord's Application was joined to this hearing as a cross application. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To cancel a notice to end tenancy for landlord's use of the property pursuant to section 49; and
- b) To recover the filing fee for this application.

The landlord applies pursuant to the Act for orders as follows:

- c) An order of possession pursuant to section 49;
- d) A monetary order for unpaid rent and damages suffered due to the tenant failing to move out according to the Notice to End Tenancy;
- e) To recover filing fees for their application.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that they need to end the tenancy in order to have the property for their own use? Or is the tenant entitled to any relief and to recover the filing fee? Is the landlord entitled to an Order of Possession if the tenant is unsuccessful in the application?

Has the landlord proved they have suffered damage due to a violation of the Act or tenancy agreement and the amount of losses incurred? Are they entitled to a monetary order for unpaid rent and filing fee also?

Preliminary Issue:

The authorized representative of the landlord said she is also a landlord but the online form did not allow her to enter this. The Decision and Order are amended to include her name as landlord.

Background and Evidence

Both parties and witnesses attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The authorized representative for the landlord who is also a landlord provided most of the evidence for the landlord. The undisputed evidence is that the tenancy commenced November 1, 2015, it is now a month to month tenancy, rent is \$1150 a month and a security deposit of \$575 was paid. The landlord served a Notice to End Tenancy for 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 landlord provided evidence that the daughter of one of the landlord's had recently obtained a full time job and wanted to move into this unit. She said the unit was larger than the others, it had its own front door and address so the daughter found it more desirable than others.

The tenant said the Notice had been issued in bad faith as the landlord's wanted more rent for the unit. She said this was demonstrated in their negotiations when they said they accepted her proposal to pay \$1500 a month and sign a lease on August 27, 2018 and said they would cancel the Notice to End Tenancy. However, they then said she had to pay \$1700 a month if her partner moved in and she did not accept that. Prior to this, she had refused to sign another lease as she obtained information that her lease continued after a former room mate moved out. She said another tenant, "R", has suffered similar pressure tactics but she did not want to get him involved in the hearing.

She also noted inconsistent statements by the landlord regarding who was moving into the unit, first she was told 'an owner', then 'the son', and now 'the daughter'. She recorded some of their conversations and put them in evidence. The landlords objected as they were not aware she was recording them.

The landlord said they bought the building in January 2018 and found its affairs were very muddled as the owner had been ill. For example, this tenant's lease showed no security deposit although she said she had paid one and her room mate had moved out two years previously but was still on the lease. They tried to be pro-active in managing the building and had the tenants sign leases. They said they have not evicted any other tenants but some have left voluntarily. The tenants who have stayed seem to like the building being better managed; the tenant, "R, referenced by this tenant has a good relationship with them.

The landlords said that anything discussed with the tenant by their representative is usually presented to them for their approval. This complicates matters of communication with the tenant and this is why they asked her for written proposals for discussion. They explained the inconsistent statements about who was moving into the unit by saying that both son and daughter of one of the landlords liked the unit and the son was going to move in as the daughter did not have a full time job. When she got a full time job, she wanted the unit as she wants to be independent now.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

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Analysis:

I find section 49 of the Act provides a landlord may end the tenancy of a unit if the landlord or a close family member intends in good faith to occupy the unit. As discussed with the parties in the hearing, the onus is on the landlord to prove on a balance of probabilities that they are ending the tenancy for this reason. The tenant questions the good faith of the landlord.

I find Policy Guideline 2 states:

If the good faith intent of the landlord is called into question, the onus is on the landlord to establish that they truly intended to do what they said on the notice to end tenancy. The landlord must also establish that they do not have another purpose or an ulterior motive for ending the tenancy.

I find the evidence of the landlord credible that they are ending the tenancy in good faith to have the unit occupied by a daughter of one of the landlords. I find the alleged inconsistencies in recorded conversations are credibly explained by the fact that one person/landlord was the go-between for all six and had to have negotiations approved. I find the explanation of the background behind the change from son to daughter occupancy is credible as the daughter just got a full time job and wanted independence.

In respect to the recordings of conversations, I find the landlords had no knowledge of the tenant recording the conversations. The law on such recordings is mixed. One legal source states;

In fact, it is illegal in Canada to possess surreptitious recording devices. The reason you can record your own conversations is the "one party consent" exception, meaning, where one of the parties to a conversation consents to being recorded, then they can record the conversation.

In light of this, I listened to the audio recordings. I found they were records of negotiations with the representative stating the multiple landlords involved required written proposals for consideration. In a number of them, she reiterates that an owner wants to move in. The representative explained in the hearing that she was unsure at that point which owner's family member wanted to occupy the unit. I find the recordings do not illustrate bad faith on the part of the landlords.

For the above reasons, I dismiss the application of the tenant to cancel the Notice to End Tenancy. I find the tenancy terminated on October 31, 2018 (as automatically corrected under section 53 of the Act). I find the landlord entitled to an Order of Possession effective December 31, 2018 as requested.

In respect to the landlord's application, I find them entitled to an Order of Possession as noted above and to recover their filing fee.

I find insufficient evidence to support their application for damages and in any case, the landlord stated they wanted to waive this claim. I dismiss this portion of their application.

Regarding the claim for over holding rent, the parties agreed the tenant had had the one month free rent for November 2018 in conformance with the legislation but she had paid no rent for December 2018. They agreed that \$1237 in rent owed.

Conclusion:

The Application of the Tenant to set aside the Notice to End Tenancy is dismissed without recovery of her filing fee due to lack of success. The tenancy is at an end on October 31, 2018 (as corrected). An Order of Possession is issued to the landlord effective December 31, 2018.

I find the landlord entitled to a monetary order for over-holding rent for December, 2018. A monetary order for \$1237 plus the filing fee of \$100 is issued to the landlord.

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: December 04, 2018

Residential Tenancy Branch