



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Fair Label Enterprises Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, OLC

Introduction

This hearing dealt with a tenant's application to cancel 2 Month Notice to End Tenancy for Landlord's Use of Property and orders for the landlord to comply with the Act, regulations or tenancy agreement. Both parties appeared or were represented at the hearing and had the opportunity to be make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

Preliminary and Procedural Matters

At the outset of the hearing, I determined the landlord had received the tenant's hearing documents and evidence. I also confirmed that the landlord had not served or submitted any evidence or written submissions for this proceeding.

During the hearing, I determined that the tenant thought she had uploaded 58 pages of documents to the Residential Tenancy Branch service portal on January 21, 2019 because she received a receipt from the system when she uploaded the file; however, I was only able to see one page, most likely the first page of the tenant's submission. The tenant described how the submission had set out details of the previous dispute proceedings involving the parties. I asked the tenant to describe the previous proceedings, which she did, and the landlord's agents did not refute the events as described by the tenant. The tenant also indicated that she had provided a map of the units in the building to demonstrate that the view from the rental unit and that other units also provide a view of the front entrance. The landlord's agents did not refute that other units provide a view of the front entrance. Accordingly, I found the tenant's undisputed oral description of the previous disputes and the view of the front entrance from the rental unit and other units to be adequate and I did not authorize or request the tenant to re-submit her submission.

I also explored another issue with respect to identity of the tenant(s). The tenancy agreement was signed by the tenant referred to by initials AS. AS and her sister, referred to by initials RS, moved in together at the start of the tenancy; however, RS did not sign the tenancy agreement. RS stated the manager at the time did not present her with the tenancy agreement for signature. AS moved out of the rental unit but did not give the landlord a notice to end tenancy and RS remained in occupation of the rental unit. RS has also paid the rent to the landlord. Previous dispute resolution decisions also identify both AS and RS as co-tenants.

I informed the parties that occupying the rental unit does not in itself establish a tenancy as such a person may be merely an “occupant” of the rental unit. Nor, does moving out of a rental unit while leaving the rental unit occupied automatically end a tenancy or a co-tenants obligations under the tenancy agreement. All parties appearing before me were agreeable to recognizing both RS and AS as co-tenants. AS also provided a service address to the landlord during the hearing for purposes of serving her any documents related to this tenancy. Accordingly, as a matter of record, both RS and AS shall be recognized as tenants for this rental unit unless the tenancy is legally ended or all parties agree to terminate one of the co-tenants in writing. Further, both RS and AS remain entitled to the benefits of the tenancy and remain obligate to fulfill the terms of the tenancy agreement.

Issue(s) to be Decided

1. Should the 2 Month Notice to End Tenancy for Landlord’s Use of Property dated December 28, 2018 be upheld or cancelled?
2. Is it necessary and appropriate to issue orders for compliance to the landlord?

Background and Evidence

The one year fixed term tenancy started on October 1, 2010 and continued on a month to month basis upon expiration of the fixed term. The rent is currently \$813.00 payable on the first day of the month for the one-bedroom apartment.

On December 28, 2018 the landlord posted a 2 Month Notice to End Tenancy for Landlord’s Use of Property (“2 Month Notice”) on the door of the rental unit. The tenant found the 2 Month Notice the following day and filed to dispute the 2 Month Notice within the time limit for doing so.

The 2 Month notice has a stated effective date of February 28, 2019 and the reason for ending the tenancy, as indicated on the 2 Month Notice is:

- The landlord is a family corporation and a person owning voting share in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

The landlord's representative appearing at the hearing, submitted that the 35 unit property has had issues with security and repair issues and that the owner of the property intends to occupy the rental unit to improve security and respond to repair issues in a timely manner. Also, the owner wants to reside closer to her grandchild.

The landlord's representative confirmed that the property is owned by the corporation identified on the 2 Month Notice. The landlord's representative provided the name of the person who intends to move into the rental unit.

The landlord's representative submitted that the rental unit was chosen by the owner because it has a view of the front entrance, it is close to the office located in the building, and is on the ground floor. The owner does not want to reside on a higher floor due to the stairs and does not wish to reside in one of the basement units, in part, to avoid radiation that may be emitted from the room where the hydro meters are located.

The tenants submitted that this is the third 2 Month Notice they have received. The first 2 month Notice was issued only days after they were awarded compensation by an Arbitrator and that 2 Month Notice was eventually set aside upon Judicial Review where it was determined, among other things, that the wrong reason was indicated on that 2 Month Notice since the landlord is a corporation. Then, in September 2018 the second 2 Month Notice was issued, which the tenant disputed, and that 2 Month Notice was set aside following a hearing in November 2018 because the landlord did not sufficiently serve evidence to support it. The tenants submit that the landlord then issued the subject 2 Month Notice in December 2018 and again did not provide sufficient evidence to support the reason given.

The tenants testified that the day-to-day management of the property is performed by a property manager and they understand the "owner" is a 75 year old woman that they have never heard from. The tenants questioned whether the owner truly intends to occupy the rental unit; that the front entrance can be seen from other units; and, the

building has automated security cameras installed; and, a telephone number for tenants to call in case of repair issues.

The tenants suspect the landlord has been issuing Notices to End Tenancy repeatedly due to the tenants raising repair issues and succeeding in having repair orders and monetary compensation in previous dispute resolution proceedings.

The landlord's representative denied the 2 Month Notices were given in retaliation as demonstrated by the landlord offering the tenant(s) other rental unit in the building. The tenant acknowledge the landlord offered other units but explained that they were all for a greater amount of rent and have problems with mice whereas their unit has been mouse-proofed.

The landlord's representative acknowledged some of the systems in the building can be monitored electronically but emphasised it is the response time that would be improved by having an on-site manager. The current property manager manages seven buildings and does not reside on site. This is why the owner intends to reside in the rental unit.

Analysis

Where a notice to end tenancy comes under dispute, the landlord bears the burden to prove the tenancy should end for the reason indicated on the Notice. The burden of proof is based on the balance of probabilities.

The stated reason for ending the tenancy on the 2 Month Notice before me is provided under section 49(4) of the Act. Section 49(4) provides that a landlord may end the tenancy where:

(4) A landlord that is a family corporation may end a tenancy in respect of a rental unit if a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

[Reproduced as written with my emphasis underlined]

Section 49(1) provides the definition of a family corporation for purposes of section 49(4). For purposes of section 49(4), a family corporation is defined as follows:

"family corporation" means a corporation in which all the voting shares are owned by

- (a) one individual, or
- (b) one individual plus one or more of that individual's brother, sister or close family members;

[Reproduced as written]

Where a landlord seeks to end a tenancy under section 49(4), I find it reasonable to expect that, at a minimum, the landlord would provide evidence to demonstrate ownership of the property by a corporation and the shareholdings of the corporation in order to establish the property is a "family corporation". Then, I would expect to be provided evidence to demonstrate the shareholder of the family corporation, or close family member of the shareholder, intends in good faith to occupy the rental unit.

In this case, the landlord's representative confirmed that the subject property is owned by the corporation named on the 2 Month Notice but did not make any oral or written submissions concerning the person(s) who hold the voting shares of the corporation. Nor, was I provided any documentary evidence to corroborate the ownership of the property and the shareholdings of the corporation.

Also of consideration is that the person identified by the landlord's representative as intending to occupy the rental unit did not provide any sworn statements or appear at the hearing in order to be examined further. Rather, all that I have been provided is an oral statement by a third party alleging the owner intends to occupy the rental unit.

In light of the above, I find the landlord did not provide sufficient evidence to meet its burden to prove the 2 Month Notice served upon the tenants on December 28, 2019 should be upheld. Therefore, I grant the tenant's request to cancel the 2 Month Notice dated December 28, 2018 and the tenancy shall continue at this time.

The tenant also requested orders for compliance. Section 28 of the Act provides that a tenant is entitled to protection of their right to quiet enjoyment. Repeated issuance of Notices to End Tenancy for the same reason may be seen as harassment or persecution by the landlord and form a basis to give the tenant specific orders and/or compensation.

Considering this is the third 2 Month Notice to End Tenancy for Landlord's Use of Property served upon the tenants, two of which were issued for the same reason, and the landlord has failed on both occasions to demonstrate the tenancy should end so that the holder of the voting shares of a family corporation or a close family member of that person, may occupy the rental unit, I strongly caution the landlord that issuance of another Notice to End Tenancy for the same reason may be seen as a breach of the tenant's right to quiet enjoyment and entitle the tenant to further remedy, including monetary compensation.

Conclusion

The 2 Month Notice dated December 28, 2018 is cancelled and the tenancy continues at this time.

The landlord is cautioned by way of this decision that issuance of another 2 Month Notice for the same reason may be viewed as harassment of the tenants and entitle the tenants to further remedy, including monetary compensation.

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: February 06, 2019

Residential Tenancy Branch