



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DB BARNSTON INVESTMENT LIMITED
PARTNERSHIP and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL FF

Introduction

Both parties attended the hearing and gave sworn testimony. The landlord said they served a Four Month Notice to End Tenancy dated December 24, 2018, to be effective April 30, 2019 for landlord's use of the property. The tenant said she served her Application for Dispute Resolution dated April 1, 2019 by registered mail and the landlord agreed they got it. I find the documents were legally served pursuant to section 89 of the Act for the purposes of this hearing. The tenant applies:

- a) To Cancel the Notice to End Tenancy for landlord's use of the property (for conversion to a manager's unit); and
- b) To be granted more time to make this Application.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Should the 4 Month Notice dated December 24, 2018 be upheld or cancelled?
2. Should the tenant be granted more time to make this Application?

Background and Evidence

It is undisputed that the Tenant has occupied this rental unit since prior to 2009. The present owner entered into a tenancy agreement and rent was agreed to be \$800 a month. No security deposit was paid. The tenant said the previous landlord said she would be the last tenant so there was no need for a security deposit. The landlord said the tenant was paying only \$600 a month as they tried to accommodate her financial circumstances. The tenant contended it was reduced for she had no water as the farmers using the barn used it all.

The Landlord testified that the rental unit is a home located on 65 acres of land on an island. There is a dairy barn, livestock shed and other farming equipment. The landlord has rented the property to a series of farmers who did not need the use of the rental unit as they lived on the island. However, the farmer tenant who has recently rented the property will operate a dairy farm and requires a 24/7 manager/herdsman to care for the animals and supervise the operation. The Landlord submitted a letter from the latest tenant who stated he needed the home for his manager to monitor the animals 24/7. He operates other farms and this is his usual practice.

The landlord accordingly served the Tenant with a 4 Month Notice which was issued pursuant to section 49(6) of the Act and listed the following reason:

- *The landlord has all necessary permits and approvals required by law and intends in good faith to (c) convert the rental unit for use by a caretaker, manager or superintendent of the residential property.*

He said the tenant received the Notice on or before December 31, 2018 and raised no issues at that time. The landlord's position is that the tenant's request for additional time does not meet the requirements of the Act as she did not file within the 30 days allowed in section 49(8) and therefore must vacate in accordance with section 49(9). In addition, the landlord submits the tenant did not provide any evidence to support 'extenuating circumstances' as required by section 66(1) of the Act. They state the landlord served this Notice in good faith and the tenant has provided no evidence to the contrary. He said no permits or approvals were necessary for this conversion of use.

The tenant questioned whether the Act should apply to this property as she has had a separate lease from the acreage and barn for years.

Analysis

Issuing a Notice to End Tenancy for Landlord's Use of Property requires that the Landlord meet or satisfy two tests as set forth under the *Residential Tenancy Act*. Section 49 (6) (b) of the *Residential Tenancy Act* states that (6) A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:

(e) convert the rental unit for use by a caretaker, manager or superintendent of the residential property;

Section 49(8) states:

(8) A tenant may dispute

(a) a notice given under subsection (3), (4) or (5) by making an application for dispute resolution within 15 days after the date the tenant receives the notice, or

(b) a notice given under subsection (6) by making an application for dispute resolution within 30 days after the date the tenant receives the notice.

(9) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

She also said her request for more time was because she was not aware she should dispute the Notice because her situation was unusual and she had some medical issues in January and early February. She had tried to get a note from her doctor but he had not provided one to her yet.

Section 66 of the Act provides for extensions of time:

66 (1) The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 59 (3) [starting proceedings] or 81 (4) [decision on application for review].

Residential Tenancy Policy Guideline 36 clarifies exceptional circumstances as follows:

The word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word "exceptional" implies that the reason for failing to do something at the time required is very strong and compelling. Furthermore, as one Court noted, a "reason" without any force of persuasion is merely an excuse. Thus, the party putting forward said "reason" must have some persuasive evidence to support the truthfulness of what is said.

Some examples of what might not be considered "exceptional" circumstances include:

- *the party who applied late for arbitration was not feeling well*
-

the party did not know the applicable law or procedure

-

the party was not paying attention to the correct procedure

-

the party changed his or her mind about filing an application for arbitration

-

the party relied on incorrect information from a friend or relative

Following is an example of what could be considered "exceptional" circumstances, depending on the facts presented at the hearing:

- *the party was in the hospital at all material times*

I find the reasons given by the tenant do not meet the definition of exceptional circumstances; therefore I deny an extension of time to file her application.

The tenant contended the Act should not apply to this situation because the land and barns had been rented to previous farmers and her house was on a separate lease.

The landlord points out the subject property fits the definition of "residential property" in section 1 of the Act as follows:

"residential property" means

(a) a building, a part of a building or a related group of buildings, in which one or more rental units or common areas are located,

(b) the parcel or parcels on which the building, related group of buildings or common areas are located,

(c) the rental unit and common areas, and

(d) any other structure located on the parcel or parcels.

I note also section 1 of the Act defines a landlord as follows:

"landlord", in relation to a rental unit, includes any of the following:

(a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,

- (i) permits occupation of the rental unit under a tenancy agreement, or*
- (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;*
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);*
- (c) a person, other than a tenant occupying the rental unit, who*
 - (i) is entitled to possession of the rental unit, and*
 - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;*

I find from the evidence the present tenant farmer fits the definition of landlord for they have the right to possession of the residential property and may permit occupation of the rental unit. I find in this case, the landlord requires the home for conversion to use by his manager to supervise his livestock on a 24/7 basis.

The tenant also questioned the landlord's good faith. I find *Residential Tenancy Policy Guideline # 2* sets out the two part test for the "good faith" requirement as follows:

- 1) The landlord must truly intend to use the premises for the purposes stated on the notice to end the tenancy; and
- 2) Second, the landlord must not have a dishonest or ulterior motive as the primary motive for seeking to have the tenant vacate the residential premises.

When considering the good faith requirement I preferred the landlord's evidence over the tenant's evidence because the landlord's evidence was consistent and credible. The undisputed facts confirmed that the Landlord had previously rented to farmers who lived on the island and did not need an onsite manager and the present tenant who is an agent of the landlord does to supervise his livestock.

In conclusion, I find the 4 month Notice was served in good faith; the tenant was out of time to dispute it and had insufficient evidence of 'extenuating circumstances' as defined.

I find the parties discussed the matter and voluntarily agreed to a move-out date of May 15, 2019. The landlord agreed to calculate and ensure the tenant received the free one month rent pursuant to this notice as granted under section 51 of the Act.

Conclusion:

I dismiss the tenant's application for more time to make the application. I dismiss her Application to cancel the 4 month Notice to End Tenancy. The tenancy was at an end on April 30, 2019 and an Order of Possession is granted to the landlord effective May 15, 2019 as agreed by the parties. No filing fee is awarded.

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: April 30, 2019

Residential Tenancy Branch