



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RA-AN ENTERPRISES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL AAT ERP LAT LRE MNDCT OLC RP

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant as against a landlord company and an individual landlord, seeking the following relief:

- an order cancelling a notice to end the tenancy for landlord's use of property;
- an order allowing access to the rental unit for the tenant and the tenant's guests;
- an order that the landlords make emergency repairs for health or safety reasons;
- an order permitting the tenant to change the locks to the rental unit;
- an order limiting or setting conditions on the landlords' right to enter the rental unit;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement;
- an order that the landlords comply with the *Act*, regulation or tenancy agreement; and
- for an order that the landlords make repairs to the unit, site or property.

The individual named as a landlord and the tenant attended the hearing, and the tenant was represented by an agent. The landlord and the tenant's agent each gave affirmed testimony and were given the opportunity to question each other and give submissions.

The Rules of Procedure specify that multiple applications contained in a single Application for Dispute Resolution must be related. In this case, I find that the primary application is for an order cancelling a Two Month Notice to End Tenancy for Landlord's Use of Property, and the balance of the tenant's application is dismissed with leave to reapply. I make no findings of fact or law with respect to the merits of those matters.

No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided related to the Two Month Notice to End Tenancy for Landlord's Use of Property has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Has the landlord established that the Two Month Notice to End Tenancy for Landlord's Use of Property was issued in accordance with the *Residential Tenancy Act* and in good faith?

Background and Evidence

The landlord testified that this month-to-month tenancy began in May, 2005 and the tenant still resides in the rental unit. There is no written tenancy agreement, however rent in the amount of \$464.30 is currently payable on the last day of each month for the following month. At the outset of the tenancy the tenant paid a security deposit in the amount of \$187.50 which is still held in trust by the landlords, and no pet damage deposit was collected.

The rental unit is a room in a commercial/residential complex containing 4 rental units. Each rental unit has bedrooms which are individually rented under separate tenancy agreements, for a total of 12 tenancies. The tenants share common areas of their respective units.

The landlord served the tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property on March 22, 2019 by registered mail, and a copy has been provided as evidence for this hearing. It is dated March 22, 2019 and contains an effective date of vacancy of May 31, 2019. The reason for issuing it states: "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's father owned the rental building but passed away and now the landlord's mother owns the building. The landlord who attended this hearing intends to move into the rental unit and is prepared to do so immediately. Her mother needs an on-site manager.

One other unit is currently vacant, but it's been spoken for, with a tenancy to commence June 1, 2019 which was arranged 4 months ago. The landlord wishes this rental unit because of the storage available, and no other units have such storage space.

The landlord had also issued a Two Month Notice to End Tenancy for Landlord's Use of Property at the same time for the room rented by the tenant's agent, which was disputed and the Arbitrator cancelled the Notice. The tenant and the tenant's agent reside in the same rental unit, under separate tenancy agreements, sharing the balance of the rental unit as common areas.

The tenant's agent testified that advertisements were placed after the Notices were issued for \$550.00 per month between April 4 and April 10, 2019. The tenant's agent was also served with a Notice which was cancelled at Arbitration. The tenant's agent does not believe the Notices were given in good faith.

The unit next to this unit is identical and has been empty for over a year. The landlord is married and lives in a home owned by her mother. There are currently 6 empty rooms the landlord could use for storage.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, and in the case of a Two Month Notice to End Tenancy for Landlord's Use of Property (hereafter referred to as "the Notice") the landlord must establish good faith intent to use the property for the purpose contained in the Notice.

In this case, the tenant and the tenant's agent share a rental unit under 2 separate tenancy agreements. The landlord issued a similar notice to the tenant's agent which was cancelled at Arbitration. Because the tenant and the tenant's agent share a rental unit, I advised the parties that I would review the Decision of the director to ensure that I avoid making any findings or decisions that are contrary to what has already been adjudicated upon.

The hearing involving the tenant's agent was held on April 29, 2019 and the date of the Decision is April 30, 2019, which concerned an application made by the tenant as against the landlord company seeking a number of orders, including an order cancelling a notice to end the tenancy for landlord's use of property. The landlord had testified that the landlord is a family corporation with all voting shares within their immediate family, and that one of them will be moving into the rental unit after the completion of some renovations, and that the tenant had been very difficult and they need the tenancy to end. The Analysis portion of the Decision states, in part:

"As mentioned, the Landlord did not submit any documentary evidence to support their testimony. While they provided testimony that they intend to occupy

the rental unit, they also provided testimony that the Tenant is difficult, and therefore the tenancy needs to end. Based on this conflicting testimony and in the absence of sufficient evidence to establish the Landlord's plans to move into the rental unit, I do not find that the Landlord has met the burden of proof to determine that the Two Month Notice was issued in good faith. As stated, the Landlord has also not met the burden of proof to establish that they are a family corporation who may issue a Two Month Notice under Section 49(4) of the *Act*."

In this case, the landlord testified that she is the daughter of the deceased landlord, and that her mother is now the landlord. She also testified that considering the previous Decision cancelling the notice to end the tenancy of the tenant's agent, if I were to uphold the Notice given to this tenant, she would effectively move in with the other tenant who was successful in the previous hearing. However, the *Residential Tenancy Act* specifies that tenancies wherein the tenant shares kitchen or bathroom facilities with the owner, the *Residential Tenancy Act* does not apply. The previous Decision also states that the landlord didn't provide evidence of a family corporation, but if that were the case, I would essentially be cancelling a tenancy agreement with a tenant for a landlord's use of property which is a matter that has already been adjudicated upon.

I am not satisfied that the landlord has established good faith intent, and the notice to end the tenancy is cancelled, and the tenancy continues.

Conclusion

For the reasons set out above, the Two Month Notice to End Tenancy for Landlord's Use of Property dated March 22, 2019 is hereby cancelled and the tenancy continues.

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: May 31, 2019

Residential Tenancy Branch