



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, PSF, MNDC, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 49;
2. An Order for the Landlord’s compliance - Section 62;
3. An Order for the provision of services and facilities - Section 65;
4. A Monetary Order for compensation - Section 67; and
5. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matter

The Tenant confirms that the claim for compliance is in relation to the Landlord serving the notice to end tenancy, that the claim for the provision of services and facilities is in relation to parking and that the monetary claim is in relation to moving costs and the use of the unit.

Rule 2.3 of the Residential Tenancy Branch (the “RTB”) Rules of Procedure provides that claims made in an application must be related to each other and unrelated claims may be dismissed with or without leave to reapply. As the claims except for the claim to

cancel the notice to end tenancy and the filing fee, are not related to the matter of whether the tenancy will end, I dismiss those claims with leave to reapply as relevant to the outcome of the tenancy.

Issue(s) to be Decided

Does the Landlord have a bona fide intention to occupy the rental unit?

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The following are agreed facts: The tenancy under written agreement started on March 15, 2012. Rent of \$958.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$425.00 as a security deposit. On June 29, 2019 the Landlord served the Tenant in person with a two month notice to end tenancy for landlord's use (the "Notice"). The Notice is signed by the Landlord, is dated June 29, 2019, sets out the rental address, gives an effective date of August 31, 2019, and is on the RTB form. The reason stated on the Notice is that the Landlord or a close family member of the Landlord intends to occupy the unit.

The Landlord states that she has owned the house with the self-contained upper floor suite for over 23 years, that the Landlord is now retired, is receiving pension funds and has come into an inheritance. The Landlord states that she no longer wants to carry out the obligations of a landlord, wants to use the extra space from the suite for visiting family and friends. The Landlord states that the suite is also bright and suitable for the Landlord's sewing.

The Tenant states that she simply does not believe that the Landlord needs the suite. The Tenant states that she believes that the Landlord wants to change the use of the area as a self-contained rental suite to use the suite as part of the Landlord's home. The Tenant argues that this is a conversion of the unit and that the Tenant is therefore

entitled to 4 months notice to end the tenancy for that purpose. The Tenant states that the Landlord has a garden suite that the Landlord could use for part of the Landlord's home instead of the suite and that this garden suite is suitable for the same use. The Tenant states that the Landlord has had several students stay in the rest of the home off and on over the years and that the last student was there quite some time ago.

The Landlord states that the garden suite referred to by the Tenant is not a suite but a workshop that it currently rented to a clock maker. The Landlord states that there is no flooring as it has only cement. The Landlord states that the workshop is currently rented for \$500.00 per month. The Landlord states that 6 years ago she only had two students from Quebec reside in the house for a period of two months. The Landlord states that there have been no other students in the house. The Landlord states that if the Notice is upheld, she would accept a later move-out date for the Tenant and requests an order of possession for September 15, 2019.

Analysis

Section 49(6) of the Act provides that a landlord may end a tenancy in respect of a rental unit with four months' notice if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:

- (a)demolish the rental unit;
- (b)renovate or repair the rental unit in a manner that requires the rental unit to be vacant;
- (c)convert the residential property to strata lots under the [Strata Property Act](#);
- (d)convert the residential property into a not for profit housing cooperative under the [Cooperative Association Act](#);
- (e)convert the rental unit for use by a caretaker, manager or superintendent of the residential property;
- (f)convert the rental unit to a non-residential use.

As there is no evidence that the Landlord intends to use the suite for any of the above purposes, I find that the Landlord was not required to give the Tenant four months notice to end the tenancy.

Section 49(3) of the Act provides that a landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. Given the undisputed evidence of a cement floor in the garden suite or workshop that generates a lower income than the Tenant's suite, based on the Landlord's evidence of retirement and other means of income, and as the Tenant provided no evidence that the Landlord intends to use the unit for any purpose other than as the Landlord's own residence, I find on a balance of probabilities that the Landlord has the good faith intention to occupy the suite. As a result, I find that the Notice is valid for its stated purpose and that the Tenant is not entitled to a cancellation of the Notice. The Tenant must move out of the unit. As the Tenant has not been successful with its claim to cancel the Notice I find that the Tenant is not entitled to recovery of the filing fee and in effect the Tenant's application on these two claims is dismissed.

Section 55(1) provides that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, an order of possession must be granted to the landlord if, the notice to end tenancy complies in form and content and the tenant's application is dismissed or the landlord's notice is upheld. Section 52 of the Act provides that in order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

Considering that the required form and content is contained on the Notice and given the dismissal of the Tenant's application I find that the Landlord is entitled to an order of possession as requested effective 1:00 p.m. on September 15, 2019.

Conclusion

The Tenant's application to cancel the Notice and recover the filing fee is dismissed.

I grant the Landlord an order of possession effective 1:00 p.m. on September 15, 2019.

This decision is made on authority delegated to me by the Director of the RTB under Section 9.1(1) of the Act.

Dated: August 23, 2019

Residential Tenancy Branch