



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NATURE GLEN DAIRY LTD. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL-4M FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's Four Month Notice to End Tenancy for Demolition, Renovation, Repair or Conversion of Rental Unit (Four Month Notice), pursuant to section 49(6) of the *Act*; and
- recovery of the filing fee for this application from the landlord pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As both parties were present, service of documents was confirmed. The landlord confirmed receipt of the tenant's Notice of Dispute Resolution Proceeding Package. Neither party submitted any documentary evidence for this hearing, save for a copy of the Four Month Notice which was submitted by the tenant.

Based on the undisputed testimonies of the parties, I find that the notice of this hearing were served in accordance with the *Act*.

As a procedural matter, I explained to both parties that section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession, if the tenant's Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Preliminary Issue – Amendment to Tenant's Application for Dispute Resolution

At the outset of the hearing, the landlord advised that his last name was misspelled on the tenant's Application. Pursuant to my authority under section 64(3)(c) of the *Act*, I amended the tenant's Application to correct the spelling of the landlord's last name.

Preliminary Issue – Procedural Matters

I explained to the parties that section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the tenant's Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Further to this, the parties were advised that the standard of proof in a dispute resolution hearing is on a balance of probabilities. Usually the onus to prove the case is on the person making the claim. However, in situations such as in the current matter, where a tenant has applied to cancel a landlord's Notice to End Tenancy, the onus to prove the reasons for ending the tenancy transfers to the landlord as they issued the Notice and are seeking to end the tenancy.

Issue(s) to be Decided

Should the landlord's Four Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession on the basis of the notice?

Is the tenant entitled to recover the filing fee from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

No written tenancy agreement was submitted into evidence for this hearing. The tenant provided the basic terms of the tenancy, to which the landlord concurred, as follows:

- This tenancy began September 1, 2012.
- Monthly rent of \$850.00 is payable on the first of the month.
- The tenant paid a security deposit of \$450.00 at the beginning of the tenancy which continues to be held by the landlord.

The parties confirmed that the rental unit is a stand-alone house, with three bedrooms and one bathroom, located on a 20-acre parcel of land within the Agricultural Land Reserve. The landlord confirmed that the property is subject to any legislative provisions governing agricultural land reserve property. The landlord stated that crops are grown on the acreage.

The landlord testified that he requires the rental unit to use as housing for his employees who work on nearby dairy farms.

The landlord testified that he served the tenant with the Four Month Notice on September 9, 2019 by posting it on the rental unit door. The tenant confirmed receipt of the notice around September 20, 2019 as he had been away from the rental unit. The tenant filed an Application for Dispute Resolution on October 8, 2019 to dispute the notice, which is within the 30-day time limit provided under the *Act*.

The reason provided for issuing the Four Month Notice was “convert the rental unit for use by a caretaker, manager or superintendent of the residential property.”

The tenant disputed the grounds for which the notice was issued, stating that there is nothing on the residential property to manage, or take care of, as the rental unit house is the only building on the property, and that the landlord was going to use the rental as housing for farm workers.

Analysis

Section 49(6)(e) of the *Act* provides that 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 convert the rental unit for use by a caretaker, manager or superintendent of the residential property.

Section 49(8)(b) of the *Act* provides that a tenant may dispute a Four Month Notice by making an application for dispute resolution within 30 days after the date the tenant receives the notice.

In this matter, I find that the tenant made an application to dispute the notice within the time limits provided by the *Act*.

As set out in the Residential Tenancy Branch Rules of Procedure 6.6 and as I explained to the parties in the hearing, if the tenant files an application to dispute a notice to end tenancy, the landlord bears the burden to prove the grounds for issuing the notice.

I find that there is no issue raised as to the landlord's good faith intention to convert the rental unit to use for housing for his employees that work for his dairy farm operation. However, I find that the issue in this matter is that this use does not conform with the reason for issuing the notice, that being to convert the rental unit for use by a caretaker, manager or superintendent for the residential property, given that there is no residential property to take care of on the property.

The definitions of "rental unit" and "residential property" are provided in section 1 of the *Act*, as follows:

"rental unit" means living accommodation rented or intended to be rented to a tenant;

"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;

Further, given the property is governed by legislation pertaining to the agricultural land reserve, I find that the landlord would be required to provide sufficient evidence of having all the necessary permits and approvals required by law prior to issuing such a notice. In this matter, there was no evidence provided that the purpose for which the landlord intends to use the rental unit is allowed by municipal bylaw or is a permitted use within the agricultural land reserve.

For these reasons, based on the testimony of the parties, on a balance of probabilities, I find that the landlord has not proven the grounds for which the notice was issued, and as such the Four Month Notice dated September 9, 2019 is cancelled and of no force or effect.

As the tenant was successful in his application to have the notice cancelled, I find that the tenant is entitled to recover the filing fee paid for this application. The tenant may

withhold \$100.00 from his monthly rent on one occasion in satisfaction of the recovery of the filing fee from the landlord.

Conclusion

The Four Month Notice dated September 9, 2019 is cancelled and of no force or effect. The tenancy will continue until it is ended in accordance with the *Act*.

The tenant may deduct \$100.00 from his monthly rent on one occasion in satisfaction of entitlement to recover the cost of the filing from 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: November 07, 2019

Residential Tenancy Branch