



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, MNDCT, LRE, CNC

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord was represented by their agent. The parties acknowledged receipt of evidence submitted by the other. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issue(s) to be Decided

Should the One Month Notice to End Tenancy for Cause and the Two Month Notice to End Tenancy for Landlords Use of Property be cancelled? If not, is the landlord entitled to an order of possession?

Is the tenant entitled to a monetary order for compensation for loss or damage under the *Act* or tenancy agreement?

Is the tenant entitled to an order compelling the landlord to comply with the Act, regulation or tenancy agreement?

Should an order be made limited or suspending the landlords' access to the property or site?

Background and Evidence

The landlord's agent gave the following testimony. TB testified that on July 27, 2020 the tenant was served with a Two Month Notice to End Tenancy for Landlord's Use of Property by posting the Notice on the tenant's door. TB testified that the reason the notice was issued is:

"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."

TB testified that the owner of the property owns multiple trailers for their business and that this acreage property is ideal for storing them on the property and for the owner to move into the home. TB testified that the owner issued the notice in good faith and fully intends to move into the property. TB testified as a result of that intention, she attended the property on July 27, 2020 to serve the notice and to inspect and measure the property for its dimensions. TB testified that the tenant was confrontational, coughed on her and told her he had COVID-19. TB testified that she had to have the police attend on that occasion. TB testified that on August 6, 2010 she gave written notice that an inspection would be done on August 10, 2020.

When TB arrived, she found the fence on the property to have been chained and locked and was denied access. TB testified that the tenant's aggressive behaviour required her to issue another notice to end tenancy. TB served a One Month Notice to End Tenancy on August 11, 2020 for the following reasons:

A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- *the tenant or a person permitted on the residential property by the tenant has*
 - (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,*

- (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or*
- (iii) put the landlord's property at significant risk;*
- (i) has failed to comply with a material term, and*
- (ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;*

As both notices are effective for September 30, 2020, TB requests that an order of possession be given for that date.

The tenant gave the following testimony. The tenant testified that he moved into the unit on February 1, 2018. The tenant testified that he and the previous owner had a verbal agreement that the tenancy was a five-year fixed term tenancy that expires on February 1, 2023. The tenant testified that he has no idea if the landlord is going to move in or not. The tenant testified that the reason that there was a confrontation with TB was that he asked her to not photograph his belongings or himself and that she attended the property without wearing a face covering. The tenant testified that she is the one that caused the discord and that it could have been easily resolved. The tenant testified that he believes the tenancy is salvageable and would like to stay.

Analysis

2 Month Notice to End Tenancy

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

The tenant has called into question whether the landlord has issued the notice in good faith. Residential Tenancy Policy Guideline 2 addresses the "good faith requirement" as follows.

Good faith is an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage.

A claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End the Tenancy. This might be documented through:

*a Notice to End Tenancy at another rental unit;
an agreement for sale and the purchaser's written request for the seller to issue a Notice to End Tenancy; or
a local government document allowing a change to the rental unit (e.g., building permit) and a contract for the work.*

If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy.

If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive for ending the tenancy.

Although the tenant filed an application to dispute the notice, he stated during the hearing "I don't have any evidence to dispute that the landlord is going to move in". In addition, the tenant continually referred to a five-year fixed term agreement but did not provide sufficient evidence to support that claim. The landlords' agent gave clear concise and credible testimony. She provided details as to the logistical and financial benefits for the owner to move into the property. Based on the above, and on a balance of probabilities, I find that the landlord has issued the notice in good faith. As a result, the landlord is entitled to an order of possession pursuant to Section 55 of the Act. The tenancy is terminated.

The Notice remains in full effect and force, the order of possession takes effect at 1:00 p.m. on September 30, 2020.

As I have found that the tenancy is over, I need not consider the merits of the One Month Notice to End Tenancy for Cause, the order to limit or suspend the landlords right to enter the property or for an order to have the landlord comply with the Act or tenancy agreement.

Monetary Claim

The tenant did not provide any documentation for this portion of his claim and was silent on this point despite being given a full opportunity to present his claim; accordingly, I dismiss this portion of his application without leave to reapply.

Conclusion

The tenancy is terminated. The landlord is granted an order of possession. The tenants' application is dismissed in its entirety without leave to reapply.

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: September 28, 2020

Residential Tenancy Branch