



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, RR, RP, MNDC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants filed under the Residential Tenancy Act (the “Act”), to cancel Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Notice”) issued on October 23, 2020, to reduce rent for repairs, to have repairs made to the premise and for monetary compensation.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

Preliminary and Procedural matters

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice to End Tenancy. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenants request to set aside the Notice to End Tenancy. The balance of the tenant’s application is dismissed, with leave to re-apply.

I should note for the record, that the male tenant SB was argumentative on this issue as they believed the request for repairs was more urgent than the status of their tenancy. However, that is not for the tenant to determine.

As the tenants’ evidence was filed late on January 25, 2021, and I was attempting to determine if the tenants complied with the Residential Tenancy Branch Rule of Procedures, the male tenant was argumentative; however, the landlords did not object

for the review and consideration of the tenants' evidence. Therefore, I will allow the tenants' evidence to be reviewed and considered.

The tenants stated that they did not receive any evidence from the landlords. The landlords' agent submitted Canada post tracking numbers which show the packages were sent on January 21, 2021. The tracking history shows the tenants were left the first card to pickup the package on January 25, 2021 and a final notice was left on February 3, 2021. I find the tenants were deemed served in accordance with the Act on January 26, 2021, I find neglect or refusal to pickup the evidence packages does not override the deemed serve provision of the Act.. Therefore, I have allowed the landlord's evidence to be reviewed and considered.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure (the "Rules") require the landlords to provide their evidence submission first, as the landlords have the burden of proving sufficient evidence to terminate the tenancy for the reasons given on the Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Should the Notice be cancelled?

Is the landlord entitled to an order of possession?

Background and Evidence

The parties entered into a fixed term tenancy that began on January 1, 2019 and was to expire on December 31, 2020. Rent in the amount of \$2,350.00 was payable on the first of each month. The tenants paid a security deposit of \$1,175.00 and a pet damage deposit of \$1,175.00.

The parties agreed that the Notice was served on the tenants. The date of the Notice was signed by the landlord was clarified at the hearing, as it is dated December 23, 2020, with an effective date of December 31, 2020.

The landlord's agent stated that they made an error on the month, as it was signed on October 23, 2020 and sent by registered mail on the same date to the tenants.

The reason stated in the Notice was that:

- 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 father or mother of the landlord or landlord's spouse

The landlord VC testified that they need the premise for their husband's mother as she has health issues and does not live in the area, and they are commuting to assist her which has been very difficult, and with the state of emergency that has become even harder. VC stated that they need to move her closer to their residence, and the rental unit is just ten-minute away from where they live. VC stated this will allow them to help her daily, and medical needs and be able to take her to medical appointments.

SB the tenant testified that the landlord's have wanted them out even before the moved in. SB stated they have no proof of this; however, they believe they are using covid as an excuse to end their tenancy. The tenant stated on the day they were to meet the landlords at the rental premise the landlord's property manager showed up and they were forced under duress to sign a new tenancy agreement or they would not get the keys.

SB testified that when they moved into the premise nothing was done that was supposed to have been completed, in fact even some of the drywall was still wet from patching and painting. SB stated that they were told the landlords had ran out of time due to the previous tenants.

The tenant stated that they gave the landlord a list of items that needed to be done, to the interior, such as bedroom and bathroom door does not work, missing doors downstairs, drywall patches not completed, and duck tape on the dryer. And the exterior needed maintenance such as de-mossing of the roof, gutter cleaning, which the landlord did not do. SB stated because these were not major repairs they informed the landlords that they would make these repairs.

SB testified that when they originally spoke to the landlords they were told that this would be a five-year tenancy. SB stated the landlords have always wanted them out and have been hostile towards them. BS stated that is unreasonable that they would be asked to leave the home during a global pandemic and a huge rental crisis.

The landlord's agent testified that they completed the move-in condition inspection with the tenants. Filed in evidence is a copy of the move-in condition inspection report with extensive pictures of the rental unit taken on that date.

The agent testified that they asked the tenants to provide them with an email in the next few days if they found any other problems. The agent stated on January 4, 2020 the tenants sent them an email of items that were missed during the move-in condition report. Filed in evidence is a copy of the email.

The landlord's agent testified that they responded to the tenant's by email on January 20, 2020. The agent stated that they sent the local handyman over several times; however, they missed fixing the bathroom ensuite door. However, they did not hear anything further from the tenants until they issued the Notice. The agent stated any major issues were dealt with immediately such as replacing the stove and refrigerator.

The landlord's agent testified that there is no ulterior motive of the landlord's, such as not wanting to make repairs or increasing the rent. The agent stated that although the landlords would have like to have ended the tenancy earlier for the landlord's aging parent to move into; they could not because the tenants were under a fixed term and the landlords gave the Notice to coincide with the end of the fixed term agreement.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

How to end a tenancy is defined in Part 4 of the Act. Section 49(1) of the Act a landlord may end a tenancy by giving notice to end the tenancy.

In this case, the reason in the Notice is

- The rental unit will 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 father or mother of the landlord or landlord's spouse

In this case, I accept the evidence of the landlord's agent that the date the Notice was issued was an obvious error as it was October 23, 2020 and not December 23, 2020

that it was signed. I find it reasonable to amend the Notice to reflect the correct date it was signed. I find this not prejudicial to the tenants as they received the Notice and it was disputed on November 12, 2020. Further, as the Notice was not received by the tenants until November 9, 2020, I find the effective vacancy date of the Notice automatically corrected to January 31, 2020.

As the tenants raised the issue of “good faith”, I must consider the merits to determine if the landlords have an ulterior motive for ending the tenancy.

The Residential Tenancy Policy Guideline 2a. states the following,

Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant, they do not have an ulterior motive for ending the tenancy, and they are not trying to avoid obligations under the RTA and MHPTA or the tenancy agreement. This includes an obligation to maintain the rental unit in a state of decoration and repair that complies with the health, safety and housing standards required by law and makes it suitable for occupation by a tenant (s.32(1)).

If a landlord gives a notice to end tenancy to occupy the rental unit, but their intention is to re-rent the unit for higher rent without living there for a duration of at least 6 months, the landlord would not be acting in good faith.

While the tenant's have alleged the landlords are hostile to them and simply want them out because they are not liked, I find that is unfounded. I have read the extensive emails and text messages provided by both parties and there is nothing in any of these email or text message to would show any hostility towards the tenants.

Further, I am not satisfied that the tenants were under duress to sign a new tenancy agreement on the date they took possession. The only tenancy agreement before me was signed on November 7, 2019, long before the possession date. Even if, a new tenancy agreement was signed, which I don't accept, this still would not support an ulterior motive. Furthermore, the agreement is for a fixed term of one year, not five. There is no guarantee for either party that the tenancy would continue after that date.

I am satisfied that the landlords are not ending the tenancy because they are trying to avoid their obligation under the RTA. The move-in condition inspection report dated January 1, 2020, shows the rental unit was in good condition at the start of the tenancy. The subsequent list of repairs given by the tenants on January 4, 2020, in nature were

minor and were not a health or safety issue. The landlord responded to the tenants' email on January 10, 2020,

Further, the evidence of the tenant was the repairs were minor and that most of these minor repairs were completed by the tenant. Which the emails of January 4, 2020, support that this was offered by the tenants and not because the landlord was refusing to do the repairs. The email also asked the tenant not to do maintenance such a demoss the roof, which appear the tenants did it anyway.

I have read the email correspondence between the parties filed in evidence and there is nothing in those emails that leads me to believe the landlords were unwilling to make repairs or complete maintenance, when they determined it was appropriate. There is no evidence that the rental unit does not meet health and safety standards. The landlord is also not obligated to make repairs if they determine unnecessary and not a health or safety issue.

Furthermore, the landlord has responded for the tenant's requests such as when the tenants informed the landlord that the stove and refrigerator were in need of repair. Both appliances were replaced within a reasonable time, this supports the landlords are meeting their obligations under the Act.

Based on the above, I am satisfied that the landlords do not have an ulterior motive to end the tenancy.

In this case, I am satisfied that the landlords' want to use the property to allow their ageing parent to move into, so they can help with their daily needs and assist with medical appointments as they are currently commuting to a different city. I find that is reasonable especially during a state of emergency where seniors are more at risk, more isolated and need greater support from family.

I find the Notice has been proven by the landlords and is valid and enforceable. Therefore, I dismiss the tenants' application to cancel the Notice.

I find the tenancy legally ended on the corrected effective date of the Notice, which was January 31, 2021.

As the landlords originally agreed to extend the effective date to February 28, 2021, and that was rejected by the tenants. I find I have no option but to grant the landlords an order of possession, pursuant to section 55 of the Act, effective **two days** after

service on the tenants. This order may be enforced in the Supreme Court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

The landlords are to ensure the tenants receive the compensation they are entitled to receive under the Notice.

Since the tenants were not successful with their application, I find the tenants are not entitled to recover the filing fee from the landlords.

At the end of the hearing the male to tenant was hostile argumentative and indicated no matter what they would not be vacating the premise until the end of August.

Conclusion

The tenants' application to cancel the Notice, is dismissed. The landlords are granted an order of possession.

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: February 04, 2021

Residential Tenancy Branch