



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, CNC, RP, OLC, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking:

- an order cancelling a notice to end the tenancy for landlord's use of property;
- an order cancelling a notice to end the tenancy for cause;
- an order that the landlord make repairs to the rental unit or property;
- an order that the landlord comply with the *Residential Tenancy Act*, regulation or tenancy agreement; and
- to recover the filing fee from the landlord for the cost of the application.

The tenant attended the hearing, as well as another person for support. The landlord also attended and the parties each gave affirmed testimony. The parties were also given the opportunity to question each other and to give submissions.

The landlord indicated during the hearing that the tenant had not served any evidence. The tenant replied that the landlord was living out of the Country at the time, and the evidence was sent to the landlord by registered mail on June 10, 2021 to the address of the landlord indicated on a notice to end the tenancy and has provided proof of such service. I find that the landlord has been provided with the tenant's evidence as required by the *Act*, and all evidence provided by the parties has been reviewed and is considered in this Decision.

During the course of the hearing I advised the parties that the Rules of Procedure require that multiple applications contained in a single application must be related. Given that the application for repairs and for an order that the landlord comply with the *Act*, regulation or tenancy agreement are not related to the applications seeking to

cancel notices to end the tenancy, those applications are dismissed with leave to reapply.

Issue(s) to be Decided

The issues remaining to be decided are:

- 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?
- Has the landlord established that the One Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*?

Background and Evidence

The landlord testified that this month-to-month tenancy began on June 1, 2017 and the tenant still resides in the rental unit. Rent in the amount of \$2,250.00 is payable on the 1st day of each month, however the parties verbally agreed at some point that the tenant could pay half of the rent on the 1st day of each month and the other half on the 15th day of each month, and a new tenancy agreement was prepared. There are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$1,125.00 as well as a pet damage deposit in the amount of \$1,125.00, both of which are still held in trust by the landlord. The rental unit is a suite within a portion of a 2-story house. The landlord lives in another portion of the house, and a carriage house on the property is also rented. Copies of the tenancy agreements made have been provided as evidence for this hearing.

The landlord further testified that on May 8, 2021 the landlord served a Two Month Notice to End Tenancy for Landlord's Use of Property by email, and the tenant confirmed receipt of it on May 10, 2021. A copy of the Notice has been provided as evidence for this hearing and it is dated May 8, 2021 and contains an effective date of vacancy of July 15, 2021. 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)," specifying, "The landlord or the landlord's spouse." The landlord testified that the landlord's family will occupy the entire house.

The tenant was also served with a One Month Notice to End Tenancy for Cause on June 8, 2021 by posting it to the door of the rental unit, and the landlord received an email acknowledgement of service from the tenant the same day. A copy of the Notice has been

provided for this hearing and it is dated June 6, 2021 and contains an effective date of vacancy of July 14, 2021. The reasons for issuing it are:

- Tenant is repeatedly late paying rent;
- Rental unit/site must be vacated to comply with a government order.

The landlord testified that while travelling the landlord pulled up late payments from bank statements and e-transfers and was in a different time zone at the time, so it showed late payments multiple times, but when the landlord returned to the Country he discovered that there were only 2 late payments of rent and the landlord wishes to retract that reason for issuing the Notice.

The landlord has provided a letter from the Chief Administrative Officer of the Village dated December 10, 2020 stating that the property is zoned One-Family Residential which permits single family use as well as 1 accessory secondary suite or 1 coach house and that the landlord cannot have more than 2 occupied dwellings on the property. It also states that the landlord must cease the rental of one of the secondary suites by February 28, 2021 and once done, the Building Inspector will conduct an inspection to ensure the safety of the property. The landlord and Village staff have been in touch since then, and email strings have also been provided for this hearing. The landlord assumes the letter from the Village is an order, and the landlord has asked for an extension to July 1, 2021 in hopes of having enough time to have the tenant move out and remove the suite. The Village is currently waiting to hear from the landlord about the suite being vacant and the outcome of this hearing. Then they will send an inspector to ensure the suite has been decommissioned.

The tenant in the carriage house is on a month-to-month tenancy and has been living there for almost 2 years.

The tenant testified that on May 2, 2021 the landlord asked for a telephone conversation, wherein the landlord said that he was planning to have his niece and baby occupy the rental unit. The landlord was willing then to rent the carriage house to the tenant. The tenant started to look for another rental, then told the landlord that the tenant would accept the carriage house. The tenant looked through the window and the tenant that lived there found out that the tenant would be occupying it, and that tenant got upset.

The tenant was then served with a notice to end the tenancy on May 8, 2021. On May 11, 2021 the tenant told the landlord that she was looking but was unable to find another unit to rent.

The tenant thought that the One Month Notice to End Tenancy for Cause was a new tactic, and the tenant never received any paperwork about a government order until served with the landlord's evidence on September 1, 2021. Further, the landlord has a business which will commence right after this hearing.

Rent is currently \$2,480.00 which includes all utilities.

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*, which can include the reason(s) for issuing it. Further, where a landlord issues a notice to end a tenancy for landlord's use of property, the landlord must establish good faith intent to use the rental unit for the purpose contained in the notice. In this case, the reasons for issuing the One Month Notice to End Tenancy for Cause are in dispute, and the landlord's good faith intent is disputed for the Two Month Notice to End Tenancy for Landlord's Use of Property.

I have reviewed all of the evidentiary material provided by the parties including all of the email strings. Of particular note is the letter dated December 10, 2020 from the Village which orders the landlord to decommission one of the suites to bring the property into the zoning requirements. There is no question that the landlord is required to do so, and I take it as a government order. The landlord testified that his family will be occupying the entire house, and since the Village has made the order, I dismiss the tenant's applications to cancel the Notices.

During the course of the hearing the landlord testified that if the tenant's application is dismissed the landlord would be content with an Order of Possession effective on October 15, 2021, and I so order.

Since the landlord served the Two Month Notice to End Tenancy for Landlord's Use of Property first, the landlord must provide the tenant with compensation equivalent to one month's rent on or before the effective date of the Order of Possession.

Conclusion

For the reasons set out above, the tenant's application for an order that the landlord make repairs to the rental unit or property is hereby dismissed with leave to reapply.

The tenant's application for an order that the landlord comply with the *Act*, regulation or tenancy agreement is hereby dismissed with leave to reapply.

The tenant's application for an order cancelling a notice to end the tenancy for landlord's use of property is hereby dismissed without leave to reapply.

The tenant's application for an order cancelling a notice to end the tenancy for cause is hereby dismissed without leave to reapply.

I hereby grant an Order of Possession in favour of the landlord effective at 1:00 p.m. on October 15, 2021 and the tenancy will end at that time.

This order is final and binding and may be enforced.

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 09, 2021

Residential Tenancy Branch