



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Royal LePage Atrium Properties and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes

CNL, MNDCT, FFT

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. A Monetary Order for compensation - Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the notice to end tenancy valid?

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

Is the Tenant entitled to the compensation claimed?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The following are agreed facts: the tenancy started in August 2015. At the outset of the tenancy the Landlord collected \$447.50 as a security deposit. Rent of \$1,010.00 is payable on the first day of each month. On May 26, 2021 the Landlord served the Tenant with a two month notice to end the tenancy for landlord’s use date May 26, 2021

(the "Notice"). The reason stated on the Notice is that the Landlord or landlord's spouse will occupy the unit. The effective date stated on the Notice is July 31, 2021.

The Tenant claims compensation for the cost for the Tenant to obtain assistance and to participate in the proceedings.

The Landlord states that they are currently living in unit #5 on the main floor in the building with the unit. The Landlord has lived there for many years and describes unit #5 as being a very small one bedroom. The Landlord states that they will occupy the Tenant's unit, a large bachelor suite, to use as both as an extra bedroom and for the storage of belongings that are currently in other storage. The Landlord's daughter will also be permanently moving back to the province in January 2022. The Landlord states that the extra bedroom in the unit will also serve as guest space for visiting family members and other guests. The Landlord may also use the unit as a home office as the Landlord does not currently have separate office space. The Landlord works independently as a real estate agent. The Landlord confirms that it has share office space to use elsewhere but that the Landlord has always had a home office. The Landlord owns the building containing the unit and 14 additional rental units. The Landlord needs a main floor unit due to mobility issues and that while other one- and two-bedroom units on the main floor, these other units bring in more rent than the Tenant's rental unit.

The Tenant states that the Landlord has harassed the Tenant throughout the tenancy, that the Landlord has tried to end this tenancy before and that the Landlord's true intention behind the Notice is to get rid of the Tenant for being troublesome. The Tenant states that previous tenancy agreements were fixed terms with a vacate clause at the end of the tenancy but that the Landlord entered into subsequent tenancy agreements without requiring the Tenant to move out of the unit. The Tenant states however that upon the end of the next fixed term tenancy end date of July 2017 and a required move-out the Landlord did not want to extend the tenancy. The Tenant states

that they were shocked by the Landlord's intention to end the tenancy at this point and after speaking with the previous property manager who spoke with the then co-owner at the time, the Landlord retracted its notice to end the tenancy and entered into another tenancy agreement with another move-out requirement at the end of that fixed term. The Tenant states that after the law changed the Tenant was not required to move out of the unit at the end of the fixed term.

The Tenant states that during the tenancy the Tenant became friends with the co-owner of the building who is the Landlord's ex-husband and that the Landlord continued to threaten to end the tenancy however no notices to end the tenancy were ever given to the Tenant.

The Tenant states that the Landlord has other options for storage on the property having between 8 to 10 empty lockers. The Tenant states that the building also contains three different locked and secure spaces for storage. The Tenant states that another comparable unit in the building was empty about 7 to 10 days before the Tenant was given the Notice. The Tenant states that this unit was then rented before the Notice was given to the Tenant. The Tenant argues that while this was an upper unit if the primary use of a unit by the Landlord was for guests or storage the Landlord's mobility would not be an issue. The Tenant states that this unit was listed for \$500.00 greater rent than the Tenant's unit. The Tenant believes that the Landlord is motivated financially and will re-rent the unit after residing there for 6 months.

The Tenant states that the Landlord has done nothing but bully the Tenant, make threats towards the Tenant and has been peeking in the Tenant's window and shrieking at the Tenant. The Tenant states that its guests have been driven away by the Landlord's behavior. The Tenant states that they are caught in the middle of the Landlord and the Landlord's ex-spouse and that the eviction is a retaliation by the Landlord for the friendship with the ex-spouse. The Tenant states that the Landlord informed the Tenant on several occasions that if the Tenant continues the friendship with

the ex-spouse the Landlord would make sure the Tenant was out of the unit. The Tenant states that as a result the Tenant informed the ex-spouse in 2018 or 2019 that they could no longer be friends until the divorce was finalized. The Tenant states that on one occasion the Landlord said that the Tenant should work for the Landlord and when the Tenant refused the Landlord became agitated and said, "you will do what I tell you". The Tenant wants to remain in the unit as it is their home, part of their life and only a few minutes away from the Tenant's workplace. The Tenant states that the Landlord cannot stand the Tenant and cannot control the Tenant and that the Landlord should not be treating the Tenant in this manner. The Tenant states that they made an application to stop the Landlord from harassing and threatening the Tenant but that this application was ultimately withdrawn. (file #110033859). The Tenant provides affidavits from guests.

The Tenant states that the Landlord's current residence is one of the biggest units in the building and that the Landlord's ex-spouse informed the Tenant that other rooms were attached to this unit making it much larger.

The Landlord states that its current residence has one bedroom and one bathroom and is approximately 900 square feet in size. The Landlord states that the marriage has nothing to do with the eviction but that boundaries were being broken by the ex-spouse having hired the Tenant to do some work. The Landlord denies screaming or yelling at the Tenant and states that the Tenant telling the Landlord that he was afraid of her was raised with the Landlord's psychologist.

The Landlord states that storage is needed for a work desk and an extra sofa. The Landlord states that between 2018 and 2021 the Landlord had rare to no work and that since March 2021 the Landlord has been off work. The Landlord states that their real estate licence was renewed in August and that the Landlord plans to return to work. The Landlord states that they are also suffering from PTSD and that angry outbursts are not the Landlord's style.

The Tenant's Witness, the ex-spouse of the Landlord states that the Landlord's current residence is at least 1000 square feet and has its own laundry unlike the other units. The Witness states that the unit right next to the Landlord's residence is a two bedroom and one of the larger units. The Witness states that the Landlord has 4 adult children residing in Vancouver, Ontario and Alberta. The Witness states that the child living in Alberta has been there for well over 7 years. The Witness states that it has been over 5 years since the Landlord has been separated from the Witness. The Witness states that in late 2016 or early 2017 the Landlord was not going to renew the tenancy and that as late as March 2021 the Landlord wanted the Witness to sign an eviction notice for the Tenant. The Witness states that the Landlord was trying to end the tenancy because the Landlord does not like the Tenant and did indirectly tell the Witness to not be around the Tenant. The Witness states that the Landlord was angry with the Witness for hiring the Tenant, a locksmith, to replace locks in the building.

The Landlord states that in 2016 the Landlord did not want the Tenant doing any work for them. The Landlord states that the property containing the rental building was transferred to the Landlord's name alone as of March 31, 2021. The Landlord states that other than a long time ago there is nothing personal in the eviction.

The Tenant argues that there is no financial sense to use the unit as storage or workspace as the rental income for the unit is higher than the costs of office or storage. The Tenant states that the Landlord can obtain workspace for \$500.00 per month and storage for about \$140.00 per month.

The Landlord seeks an order of possession for November 30, 2021 in time for the youngest daughter to come home. The Landlord states that this daughter was in school to become a social worker and is ready to return permanently in December 2021.

Analysis

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. Policy Guideline #2a provides that good faith requires an honest intention with no dishonest motive and means that a landlord does not have an ulterior purpose for ending the tenancy.

The Landlord's evidence of always using a home office space in their own unit and the availability of shared office space elsewhere does not support the Landlord's evidence of needing to use the rental unit for office space. The use of the unit as office space in this context does not support the good faith intention of occupation of the unit as a residence. Similarly, the use of the rental unit for storage, given the undisputed evidence of other storage spaces available on site, does not support the good faith intention of occupation of the unit as a residence.

While the use of the unit for family or guest stays could be seen a good faith intention to occupy the unit as a residence, there is no evidence of this need existing at the Landlord's current residence and I note the Landlord's evidence of having resided in its current residence for several years. There is no evidence to support that the daughter made plans to permanently move in with the Landlord at the time the Notice was issued. I note that there is no statement or witness evidence from this daughter to confirm the details of this plan or to confirm the daughter's intention to move in with the Landlord. Further if the daughter is to occupy the unit as a bedroom, this evidence is inconsistent with the Landlord's evidence that the unit would be used for visiting family or guests. For these reasons and given the undisputed evidence of the Landlord's previous attempts to end the tenancy during the tenancy and as recently as March 2021, the Witness evidence that the Landlord wanted to end the tenancy due to a dislike of the Tenant, and the Tenant's supported evidence of the Landlord's questionable behavior directed to the Tenant prior to the service of the Notice, I find on a balance of probabilities that the Landlord has an ulterior motive for ending the tenancy. As the

Landlord has not substantiated a good faith intention for the Notice, I find that the Tenant is entitled to a cancellation of the Notice and the tenancy continues.

As there is nothing in the Act that provides compensation for participation in the proceedings other than the recovery of the filing fee, I dismiss the Tenant's claim for compensation. As the Tenant's claim to cancel the Notice has been successful, I find that the Tenant is entitled to recovery of the **\$100.00** filing fee and the Tenant may deduct this amount from future rent payable in full satisfaction of this claim.

Conclusion

The Notice is cancelled, and the tenancy continues.

I grant the Tenant an order under Section 67 of the Act for **\$100.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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

Dated: October 6, 2021

Residential Tenancy Branch