



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Advanced Property Management & Real
Estate and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, PSF, RR, 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. An Order for the provision of facilities or services - Section 65;
3. An Order for a rent reduction - Section 65; and
4. 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. No issues were raised in relation to the Parties provision and receipt of evidence.

Preliminary Matters

The Tenant’s claim for facilities or services repairs are in relation the Tenant’s use of a garage, shed and carport on the property. The Tenant’s claim for a rent reduction is for the loss of use of those areas.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure provides that claims made in an application must be related to each other and unrelated claims may be dismissed with or without leave to reapply. As the claim for services and facilities and the claim for a rent reduction is not related to the matter of whether the tenancy will end, I dismiss these claims with leave to reapply.

Issue(s) to be Decided

Is the notice to end tenancy valid for its stated reason?

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

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The following are agreed facts: The tenancy started September 1, 2012. At the outset of the tenancy the Landlord collected \$500.00 as a security deposit and \$500.00 as a pet deposit. Rent of \$1,105.45 is payable on the first day of each month. On May 28, 2021 the Landlord served the Tenant in person with a two month notice to end tenancy for landlord's use dated May 28, 2021 (the "Notice"). The Notice sets out an effective date of July 31, 2021. The reason stated on the Notice is that the Landlord or Landlord's spouse will occupy the unit.

The Landlord's Agent states that at the beginning of May 2021 the Owner instructed the Agent by email to end the tenancy as the Owner was retiring and intended to return to Canada from the U.S. to reside in the unit. The Owner was informed of the Act's requirements for occupation of the rental unit.

The Owner states that they have resided in the U.S. off and on over a number of years as the Owner was employed in the film industry in the U.S. The Owner is currently residing in the U.S. awaiting possession of the unit that was purchased in 2006 with the intention of it becoming the Owner's retirement residence. The Owner has no idea where they may reside if they are not successful in obtaining possession of the unit. The majority of the Owner's furniture is stored locally with minor furnishings to be brought back from the U.S. Prior to serving the Notice the Owner instructed their Agents to prepare the property for the construction of a coach house intended to generate rental income for the Owner's retirement. These plans were started 6 years

ago but have been delayed until the Owner obtains possession of the unit. There are no current COVID requirements restricting the Owner's re-entry into Canada.

The Tenant states that they were informed on April 20, 2021 of the Owner's intention to construct the coach house and were asked to remove their belongings from the garage for this construction. The Tenants were told by the Agents that the Owner would retire to the coach house. The Tenants did not object to this construction and asked for a container or other accommodation for their belongings kept in the garage. The Tenants had been told by the Landlord's former agent that if they started a dispute over this matter they would be evicted. The Tenants were not informed of the Owner's intention to occupy the unit until after the day after the Tenants served the Landlord with an application for dispute resolution in relation to the loss of the areas to be used for the coach house. The Tenants believe that they are being evicted for having started the dispute over the areas being removed for the coach house.

The Owner states that at the time the Agents were given instructions for the coach house preparation the Owner did not intend to occupy the unit. The Owner's original plan was to construct the coach house and eventually retire at the unit. The Owner was going to reside elsewhere such as with friends or at a motel. The Owner instructed their Agents to end the tenancy after learning the Tenants would not remove their belongings. The Owner can now finally retire and is able to be present for the construction of the coach house and move into the unit sooner. The Owner argues that despite the timing of the occupation of the unit, the Owner has the good faith intention to occupy the unit.

The Agent states that person the Tenants say informed them that the Owner would retire in the coach house was a receivables clerk and not an agent of the Owner. The Agent has no knowledge about any intent of the Owner to reside in the coach house after its construction.

The Owner states that at one point they were considering occupation of the coach house but that in May 2021 it became more sensible to occupy the unit. The Landlord seeks an order of possession for October 31, 2021 if the Notice is not cancelled.

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. Good faith means a landlord does not have an ulterior purpose for ending the tenancy, and they are not trying to avoid obligations under the RTA or the tenancy agreement.

I note that the Owner's evidence is that they can "now finally retire". However, there is no evidence, supportive or otherwise, of when the Owner retired or if the Owner is currently retired. Given the Owner's evidence that they originally intended to "eventually" retire to the unit and would live elsewhere until the completion of the coach house, I consider that the occupation of the unit was not required by the Landlord for retirement purposes or for the construction of the coach house. For these reasons and given the Owner's evidence that they instructed their Agents to end the tenancy after learning the Tenants would not remove their belongings from the area of the coach house construction along with the Tenant's undisputed evidence that they were informed of the Owner's intention to occupy the unit the day after the Tenant served the Landlord with an application for dispute resolution, I find on a balance of probabilities that the Landlord's intention in ending the tenancy was to remove any obstacles from the Tenant for the construction of the coach house or to remove any liability of the Landlord to the Tenant for the construction of the coach house. This brings me to find on a balance of probabilities that the Landlord did not have the good faith intention required to end the tenancy. The Tenant is therefore entitled to a cancellation of the Notice and the tenancy continues.

As the Tenant has been successful with its claim, 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.

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 5, 2021

Residential Tenancy Branch