



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OPB, FFL

Introduction

This hearing dealt with cross-applications pursuant to the *Residential Tenancy Act* (the Act)

The landlord applied for:

- an Order of Possession pursuant to section 55; and
- authorization to recover the filing fee from the tenants pursuant to section 72 of the Act.

The tenant applied for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47.

At the outset of the hearing, I explained to the parties that as these hearings were teleconferences, the parties could not see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so.

All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation. All parties acknowledged the evidence submitted and were given an opportunity to be heard, to present sworn testimony, and to make submissions. I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties confirmed that they were ready to proceed with the hearing, they did not want to settle this application, and they wanted me to make a decision regarding this application. Neither party made any adjournment or

accommodation requests. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issue – Notice to End Tenancy for Cause

The tenant filed an application using the code to dispute a One Month Notice to End Tenancy for Cause as there isn't an obvious choice for the issue at hand. However, through the initial discussions at the outset of the hearing and my questions to both parties to confirm the issue before me, both parties confirmed that the tenant filed an application in response to the landlord wishing to end the tenancy due to a term of the tenancy agreement.

I confirmed with both parties that the issue was whether the tenancy should end pursuant to section 13.1 of the Regulations. I find it appropriate to amend the application pursuant to section 64(3)(c) of the Act and proceed on the basis that the tenants are seeking an order to have the landlord comply with the Act, regulation or tenancy agreement. Both parties confirmed that they understood. The matter proceeded on that basis.

Issue(s) to be Decided

Should the landlord be granted an order of possession based on the tenancy agreement?

Is the landlord entitled to the recovery of the filing fee from the tenant for this application?

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

Background and Evidence

The landlord gave the following testimony. The tenancy began on October 1, 2016 with the current monthly rent of \$1120.00 due on the first of the month. The landlord testified that he has had a very difficult few years due to a divorce and some failed relationships. The landlord testified that his personal circumstances changed and wished to have a lower unit in this four-unit duplex. The landlord testified that he resides on the other side of the duplex in a top unit. The landlord testified that only the lower units are entitled to have access to the backyard.

The landlord testified that he wanted to have both lower units for himself and his sister to help with caring for his child. The landlord testified that when the tenants refused to move out that changed all the plans and that he now only requires a lower unit for himself as his sister will no longer be moving in. The landlord testified that although the other unit was empty through the summer, he rented it as of October 1, 2021. The landlord testified that he feels this matter is very straight forward and that the tenants signed a contract that ends their tenancy on July 31, 2021.

CD gave the following testimony on behalf of the tenants. CD testified that they have signed numerous fixed term tenancies with the landlord for varying lengths; all of which had a vacate clause. CD testified that when the legislation changed, the landlord used the "owner to occupy" clause and advised the tenants it was "for their protection". CD testified that the landlord has never followed through with moving into the unit despite it being noted on several tenancy agreements. CD testified that the landlord could have moved into the other lower unit that has been fully renovated if he truly wanted a lower unit as it was empty for several months.

CD testified that she is willing to work with the landlord and move out but on a more flexible timeline. CD testified that at the time of signing the agreement, the landlord told her that he had no intention of moving in which is a requirement of good faith. CD testified that if the landlord had provided more notice, she could have made arrangements to move but was only told through a Facebook message from the landlord. CD testified that she doesn't believe that the landlord will occupy her unit and will only renovate and re-rent it for more money. CD testified that the landlord is not acting in good faith and is using the owner to occupy clause to circumvent the rules.

Analysis

The landlord submits that the parties signed an agreement that the tenancy would end on July 31, 2021. The landlord testified that he's not sure why the tenants have filed this application as they were fully aware of the end of the tenancy. Residential Tenancy Regulation 13.1 speaks to this issue as follows:

Fixed term tenancy — circumstances when tenant must vacate at end of term

13.1 (1) In this section, "close family member" has the same meaning as in section 49 (1) of the Act.

(2) For the purposes of section 97 (2) (a.1) of the Act [*prescribing circumstances when landlord may include term requiring tenant to vacate*], the circumstances in which a landlord may include in a

fixed term tenancy agreement a requirement that the tenant vacate a rental unit at the end of the term are that

(a) the landlord is an individual, and

(b) that landlord or a close family member of that landlord intends in good faith at the time of entering into the tenancy agreement to occupy the rental unit at the end of the term.

Residential Tenancy Policy Guideline 2 speaks to “good faith” as follows:

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.*

The landlord did not dispute that the parties have signed numerous fixed term tenancy agreements of varying lengths requiring the tenants to vacate the premises at the end of the term since they first moved into the unit in 2016. The landlord testified that his primary reason for wanting a lower unit was to have access to the yard for his child as the lower units were the only ones allowed access in the up and down and side by side fourplex. However, the other lower unit was available through the summer and up until October 1, 2021. The landlord could not explain why or provide sufficient reasons why that unit wasn't suitable for him to occupy even though he confirmed that the unit had access to the backyard.

Also, the landlord gave contradictory testimony as to which unit he would actually occupy. He first stated that he was going to use both lower units along with his sister, and then later stated that he alone would occupy the subject unit. The landlord gave several different versions of his intentions. I found the landlords testimony to be illogical, contradictory and unreliable.

I find that the landlord did not intend in good faith at the time the tenancy agreements were entered into, to occupy the rental unit at the end of the term. Based on the testimony of the landlord himself, it was clear to me that the landlord used the "owner to occupy" clause as an option or "just in case" with no real plan or intention of moving in. Based on that finding, the landlord is not entitled to an order of possession. I dismiss the landlord's application in its entirety. The tenancy continues.

Although the tenants have filed to dispute a Notice to End Tenancy, there is no Notice other than the vacate clause of the tenancy agreement which I have addressed above and made a finding that the tenancy continues. Furthermore, as I have found that the landlord is not entitled to an order of possession, there is no necessity for me to make an order pursuant to section 62 of the Act.

Conclusion

The landlord's application is dismissed without leave to reapply. The tenancy continues.

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: October 20, 2021

Residential Tenancy Branch