



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, MNDCT, RR, RP, PSF, OLC, CNL

Introduction

This was a hearing that dealt with the tenant's two applications pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice"), pursuant to section 46;
- cancellation of the Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice"), pursuant to section 49;
- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67;
- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 62;
- an Order for regular repairs, pursuant to section 32;
- an Order to provide services or facilities required by the tenancy agreement or law, pursuant to section 65;
- an order seeking a rent reduction pursuant to section 65.

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- Severance

Residential Tenancy Branch (RTB) Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claims regarding the 10 Day Notice and the Two Month Notice and the continuation of this tenancy are not sufficiently related to any of the tenant's monetary claim to warrant that they be heard together. The parties were given a priority hearing date to address the question of the validity of the Notices to End Tenancy.

The tenant's monetary claim is unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the Notices to End Tenancy. I exercise my discretion to dismiss the tenant's monetary claim with leave to reapply.

Issues to be Decided

Should the landlord's 2 Month Notice and 10 Day Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to a rent reduction?

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

Is the tenant entitled to an order to have the landlord conduct repairs to the unit or site?

Is the tenant entitled to an order to have the landlord provide services or facilities as required by the Act or tenancy agreement?

Background and Evidence

The landlords gave the following testimony. The tenancy began on or about October 1, 2020. Rent in the amount of \$1500.00 is payable in advance on the first day of each month, no security deposit was paid. The landlord issued a Two Month Notice to End Tenancy for Landlords Use of Property on September 29, 2021 with an effective date of November 30, 2021, the landlords wish to move into this unit and wants the tenant to move out. JS testified that they presently live in the “pickers hut” which is a small structure next to the main home. JS testified that it doesn’t have suitable plumbing or heating to live in. JS testified that she and her husband purchased this property in September 2020 and want to live in the main home. RS testified that they seek an order of possession.

The tenant gave the following testimony. The tenant feels the notice is “unfair” because she has no where to move to. The tenant testified that her husband left in March 2021 and that she has had a difficult time. The tenant testified that she is planning to move out but can’t give a firm date as to when she will have new housing. The tenant testified that she would move if given sufficient time.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant’s claim and my findings around each are set out below.

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 landlords gave clear concise and credible testimony. JS provided details as to the logistical and practical benefits for her and her husband to move into the main house. JS provided extensive documentation to support that the small home is essentially a “pickers hut” and not suitable for living in long term. In the tenant’s own testimony, she stated that she does believe that the landlords will be moving in but filed this application because she hasn’t found a home to move to. Based on the above, and on a balance of probabilities, I find that the landlord has issued the notice in good faith. The form and content of the notice complies with section 52 of the Act. The Notice remains in full effect and force. As a result, the landlord is entitled to an order of possession pursuant to Section 55 of the Act. The tenancy is terminated.

As I have found that the tenancy is at an end, I need not consider the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and therefore dismiss this portion of the tenant’s application without leave to reapply.

All the other tenancy related issues are also dismissed without leave to reapply as the tenancy is now ended.

Conclusion

The tenancy is terminated. The landlord is granted an order of possession.

The tenants’ monetary claim is dismissed with leave to reapply. All the other issues applied for in both applications are dismissed without leave to reapply.

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: November 29, 2021

Residential Tenancy Branch