



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC – 4M, CNR, OLC

Introduction

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

- cancellation of the landlord's 4 Month Notice to End Tenancy for Demolition, Renovation, or Conversion to Another Use ("4 Month Notice"), pursuant to section 49;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- cancellation of the landlord's 10 Day Notices to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord was assisted by JC in the hearing. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing by the attending parties. Both parties confirmed that they understood.

The landlord confirmed receipt of the tenant's applications ('Applications') and evidence. In accordance with sections 88 and 89 of the *Act*, I find that the landlord duly served with the Applications and evidence. The tenant testified that they did not receive any evidence from the landlord. After discussing the issue, the tenant confirmed that they were okay with proceeding with the scheduled hearing, and the admittance of the landlord's evidentiary materials.

The tenant confirmed receipt of a 10 Day Notice to End Tenancy for Unpaid Rent dated March 18, 2022 as well as a 4 Month Notice dated March 31, 2022. In accordance with section 88 of the *Act*, I find that both Notices were duly served on the tenant.

Issues(s) to be Decided

Should the landlord's 10 Day Notice and 4 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to an order for the landlord to comply with the *Act*?

Background and Evidence

While I have turned my mind to all the documentary evidence, and testimony of the parties and witnesses, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the tenant's applications and my findings are set out below.

This month-to-month tenancy began in January of 2012. The tenant currently rents a cabin on the landlord's property for \$816.26 per month, payable on the first of the month. The landlord had collected a security deposit in the amount of \$325.00, which the landlord still holds.

The tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent on March 18, 2022 for failing to pay \$300.00 in rent and \$494.00 for cleaning of the septic tank. The landlord confirmed in the hearing that the \$300.00 was paid by the tenant, but the tenant still owes \$494.00 for the septic tank cleaning.

The landlord also served the tenant with a 4 Month Notice to End Tenancy in order to convert the cabin back to a chicken coop. The landlord testified that the property was formally a chicken farm, and the landlord wanted to convert the cabin back to a chicken coop. The landlord testified that they were informed by the municipal health officer that the septic tank was not functioning and was ordered to stop using it.

The tenant filed an application for the landlord to construct and maintain a proper septic system that complies with the Public Health Act. The tenant testified that the landlord has chosen to defy the order, instead of properly repairing it.

Analysis

Section 46(4) of the *Act* provides that upon receipt of a notice to end tenancy for unpaid rent the tenant may, within 5 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch, or pay the overdue rent. In this case, it is undisputed that the tenant paid the \$300.00 in outstanding rent. The landlord testified that the tenant still owed the money for the septic tank cleaning.

RTB Policy Guideline #1 states the following:

SEPTIC, WATER AND OIL TANKS

1. The landlord is responsible for emptying a holding tank that has no field and for cleaning any blockages to the pipe leading into the holding tank except where the blockage is caused by the tenant's negligence. The landlord is also responsible for emptying and maintaining a septic tank with a field.
2. The landlord is responsible for winterizing tanks and fields if necessary.
3. The tenant must leave water and oil tanks in the condition that he or she found them at the start of the tenancy e.g. half full.

The tenant testified that not only is the landlord attempting to collect money from the tenant to clean the septic tank, the landlord has failed to properly repair and maintain the septic tank system.

The tenant submitted a letter dated December 9, 2021 from the Health Authority stating that on December 8, 2021 an inspection was conducted at the property owned by the landlord, and that as a result of the inspection the inspector has "reasonable and probable grounds to believe, and do believe, that you are in contravention of the Sewage System Regulation".

The letter includes an order that the landlord:

1. Cease and desist the discharge of sewage onto the ground.
2. Complete construction of a sewerage system which complies with the Regulation on or before January 28, 2022.

Based on the evidence before me, I am satisfied that the septic tank on the property has not been maintained by the landlord, and the landlord has been subject to an order by the Health Authority to comply with the regulation. I am not satisfied that the landlord has provided sufficient evidence to support that any repairs or construction has taken place to ensure compliance. I find that this has impacted the tenant's right to enjoy and use the property, and furthermore, I find that the landlord has not met their responsibility to empty and maintain the septic tank as required. Accordingly, I do not find that the tenant is responsible for reimbursing the landlord the cost of emptying the tank, and therefore the 10 Day Notice dated March 18, 2022 is not valid. I allow the tenant's application to cancel the 10 Day Notice.

The landlord also served the tenant with a 4 Month Notice in order to convert the cabin to a chicken coop, which the tenant disputes was served in good faith.

Subsection 49(6) of the *Act* sets out that a landlord may end a tenancy in respect of a rental unit where the landlord, in good faith, intends to convert the rental unit to a non-residential use.

Residential Tenancy Policy Guideline #2: Good Faith Requirement When Ending a Tenancy states:

“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 that they do not have an ulterior motive for ending the tenancy.”

The tenant raised the question of the landlord’s true intentions in ending this tenancy. As the tenant raised doubt as to the landlord’s true intentions, the burden shifts to the landlord to establish that they do not have any other purpose to ending this tenancy.

The tenant testified that the cabin was previously used to house employees, and not used as a chicken coop. The tenant states that there is already an empty chicken barn on the property.

Although the landlord stated that they had issued the 4 Month Notice in order to convert the cabin to a chicken coop, I find that the tenant has raised doubt as to the true intent of the landlord in issuing this notice, which was served to the tenant shortly after the tenant was served with a 10 Day Notice to End Tenancy. I find that the landlord has not met their burden of proof to show that they are only ending this tenancy for the purposes of converting the cabin for non residential use, and that is the true reason for ending this tenancy. I find that the testimony and evidence of both parties during the hearing raised questions about the landlord’s good faith, particularly the fact that there is an ongoing dispute between the parties about repairing the septic system.

Despite the explanation provided about why the landlord wishes to reclaim the space for non residential use, I find that the landlord has not met their burden of proof to show that they do not have any other purpose in ending this tenancy. As mentioned by the tenant in their application, there is a vacant structure on the property already designated for the same specific use. I find the landlord failed to provide a reasonable explanation for why they had wanted to convert the space back. Furthermore, although the landlord states that the cabin can no longer be used as a dwelling, the landlord has not provided sufficient evidence to support that this is the case. Based on the totality of the evidence before me, I find that I have significant doubt as to the true intentions of the landlord in the issuance of this 4 Month Notice.

I therefore allow the tenant's application to cancel the 4 Month Notice. The 4 Month Notice dated March 31, 2022 is hereby cancelled, and is of no force or effect. The tenancy will continue until ended in accordance with the *Act*.

The tenant had also applied for an order for the landlord to comply with the *Act*.

Section 32(1) and (2) of the *Act* outlines the following obligations of the landlord to repair and maintain a rental property:

32 (1) *A landlord must provide and maintain residential property in a state of decoration and repair that*

(a) complies with the health, safety and housing standards required by law, and

(b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.

I find that the landlord has failed to maintain the septic system in a manner that meets healthy and safety standards as required by law. I order that the landlord repair or replace the septic system in a manner that would allow the tenancy to continue, until the tenancy is properly ended in accordance with the *Act* and tenancy agreement.

Conclusion

The tenant's applications to cancel the landlord's 10 Day Notice and 4 Month Notices are allowed. The landlord's 10 Day Notice dated March 18, 2022, and 4 Month Notice

dated March 31, 2022, are cancelled and are of no force or effect. The tenancy is to continue until ended in accordance with the *Act*.

I order that the landlord repair or replace the septic system in a manner that would allow the tenancy to continue, until the tenancy is properly ended in accordance with the *Act* and tenancy agreement.

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: July 20, 2022

Residential Tenancy Branch