



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

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 a rent reduction - Section 65;
3. An Order for repairs - Section 32;
4. An Order for the provision of facilities or services - Section 65;
5. An Order restricting the Landlord’s entry - Section 70;
6. An Order for the Landlord’s compliance - Section 62.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Landlord’s Witness gave testimony under oath.

Preliminary Matter

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. The primary matter for which this hearing was scheduled is whether or not the notice to end tenancy is valid. As none of the other claims are related to whether the tenancy will end pursuant to the notice to end tenancy, I dismiss the claims with leave to reapply. Leave to reapply is not an extension of any limitation date.

It was noted that the signed tenancy agreement indicates that the person named in the application as Tenant EG is not named as a tenant in the tenancy agreement. The Landlord confirms this. Tenant TS states that Tenant EG is a tenant under the tenancy.

Tenant EG states that they are married and are the caregiver to Tenant TS. Tenant EG confirms that they do not reside with Tenant TS in the unit.

Section 2(1) of the Act provides that despite any other enactment but subject to section 4 [*what this Act does not apply to*], this Act applies to tenancy agreements, rental units and other residential property. Section 13(2) of the Act provides that a tenancy agreement must set out the names of the tenants. Based on the signed tenancy agreement wherein only Tenant TS is named and is the only signatory as the Tenant, I find on a balance of probabilities that Tenant EG is not a tenant and therefore not a party to the dispute. Nonetheless Tenant EG is given opportunity to participate in the hearing. A few minutes before the end of the hearing, after Tenant EG had been cautioned earlier about their behavior and during settlement discussions that were being attempted, Tenant EG interrupted and disagreed with Tenant TS's negotiations. As Tenant EG is not a tenant under the tenancy agreement and in order for Tenant TS to participate freely and unimpeded in any settlement discussions, Tenant EG was asked to leave the hearing. No settlement was reached.

Issue(s) to be Decided

Has the matter of the notice to end tenancy been previously determined?

Background and Evidence

The following are agreed or undisputed facts: the tenancy started on September 27, 2015. Rent of \$550.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected a security deposit of \$275.00. The Parties earlier had a dispute resulting in a Decision dated August 16, 2022 (the "Decision"). The Decision considered the Tenant's application to cancel a notice to end tenancy for landlord's use received on April 10, 2022 (the "Notice"). The Decision sets out as the reason for the Notice that the daughter of the Landlord would occupy the unit. The Decision finds that the Notice was not valid as the Landlords had "not met their burden of proof to show that their daughter intends to move into the rental unit in good faith." The Decision

makes this finding on the basis of the undisputed evidence of the Landlord's behavior, conflicts between the Parties and because the Landlord provided no supporting evidence from the daughter. The Landlord subsequently gave the Tenant a one month notice to end tenancy for landlord's use dated December 29, 2022 (the "2nd Notice"). The 2nd Notice sets out again that the child of the landlord will occupy the unit. The child is the same daughter of the Landlord referred to in the Decision that was to occupy the unit in the Notice.

The Tenant argues that the matter of ending the tenancy for the daughter to occupy the unit has already been determined in the Decision and that the Landlord is therefore not entitled to seek to end the tenancy for the same reason and based on the same facts. The Tenant reiterates the facts set out in the Decision.

The Landlord argues that the Landlord is entitled to end the tenancy with the 2nd Notice as the circumstances have changed in that the daughter (the "Daughter"), who still lives with the Landlords in the main part of the house, cannot focus on her studies as there is no privacy residing with the Landlords. The Tenant states that the Landlord's residence contains 4 bedrooms and argues that there is sufficient room for the daughter to have her own room for privacy.

The Landlord's Witness, the Daughter, states that the change is in the chaos, noise and instability of the family home as there is always a cousin at the home. The Daughter states that they started their studies in 2019 and have one or two years left to completion of the degree program. The Daughter states that family members from another country have been arriving to stay at the family home for the past couple of years. The Daughter states that they sometimes have to share a room with another person resulting in the lack of privacy or work/study space. The Daughter does not have the funds to rent another place while paying for her education from her part time employment with a federal agency.

The Landlord confirms that they have no supporting evidence of any change in the household since the Decision and that cousins have been coming and sharing the Daughter's room for the past 2 years for periods of time.

The Tenant states that the daughter has been working for a different employer since the beginning of the tenancy. The Tenant states that the Landlord has been having persons come and stay from another company since 2015 and that these persons are not relatives. The Tenant states that the Landlord has been taking more rent than allowed, has demanded that the Tenant vacate the unit, is not providing utilities and has removed the use of the bedroom room in the unit while refusing to replace it. The Tenant states that the unit is an illegal suite, and that the Landlord intends to make renovations and re-rent the unit. The Tenant states that the Landlord's house contains the Landlord's suite, another 2-bedroom suite and another rented room in the garage and that any of these other units could be occupied by the daughter.

The Landlord states that the Tenant's unit brings the lowest rental income and for this reason the Landlord did not select the other rental units for the daughter. The Landlord states that the 4th bedroom in the Landlord's suite is only a closet.

Analysis

The legal principle of ***Res judicata*** prevents a party from pursuing a claim that has already been decided. Where a disputed matter is identical to or substantially the same as the earlier disputed matter, the application of res judicata operates to preserve the effect of the first decision or determination of the matter. Additional preconditions that must be met before this principle will operate are that the earlier decision was final and the parties to that decision are the same in both the proceedings. Section 77(3) of the Act provides that a decision or an order of the director under this Part is final and binding on the parties.

The 2nd Notice was served after approximately 4 months after the Decision cancelled the Notice. Although the Daughter testifies that the 2nd Notice should be valid as the circumstances have changed, the Daughter and Landlord's own evidence of the coming and going of family, the additional occupants and the loss of privacy has been ongoing for the past two years and is the same evidence considered in the Decision that cancelled the Notice. For these reasons I find on a balance of probabilities that the circumstances giving rise to the Notice that was cancelled in the Decision have not changed with the 2nd Notice. The Landlord is trying to take a second stab at ending the tenancy for the same reason as before and in the same circumstances. The Tenant's submissions are also essentially the same as were made and considered in the Decision. As the Decision from the previous proceedings is final and binding, as this dispute deals with a matter that is substantially the same as was earlier disputed and determined in the previous proceedings and as the Parties are the same in both proceedings, I find that res judicata applies to the dispute of the 2nd Notice. The 2nd Notice is therefore cancelled, and the tenancy continues.

Conclusion

The 2nd Notice is cancelled, and 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 Act.

Dated: May 10, 2023

Residential Tenancy Branch