



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNC CNL MNDC

Preliminary Issues

After reviewing the Tenant's application and evidence, the parties confirmed that only one Notice to end tenancy was issued and that was the 2 Month Notice to End Tenancy for Landlord's use of property. After a brief discussion the Tenant confirmed she wished to withdraw her request to cancel a notice to end tenancy issued for cause, as it was never issued.

The Tenant clarified that she wished her friend to represent her as her Agent as he was present during all the interactions with the Landlord.

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to cancel a notice to end tenancy for the landlord's use of property and to obtain a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the Act, sent via registered mail on February 28, 2011. The Landlord confirmed receipt of the hearing documents.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Has the 2 Month Notice to End Tenancy been issued in accordance with the Act?
2. If so, has the Landlord met the burden of proving the good faith requirement for issuing the Notice?

3. Has the Landlord breached the *Residential Tenancy Act*, regulation or tenancy agreement?
4. If so, has the Tenant met the burden of proof to obtain monetary compensation as a result of that breach?

Background and Evidence

I heard undisputed testimony that the parties entered into a written month to month tenancy agreement effective January 2010. The current monthly rent is payable on the first of each month in the amount of \$550.00 and on approximately January 2, 2010 the Tenant paid \$275.00 as a security deposit. The tenancy agreement requires the Tenant to pay for hydro and natural gas.

The Landlord testified the rental unit is a detached building with an upper and lower suite. There are separate hydro meters for each unit and a shared natural gas meter. The thermostat for the natural gas heat is located in the Tenant's suite which is the lower unit. Each floor is approximately 700 square feet and has two bedrooms in each unit. She stated that at the outset of the tenancy the parties verbally agreed the Tenant would pay 2/3 of the natural gas costs because the upper unit is vacant.

The upper unit has been vacant since June 2009 as the Landlord has been renovating the unit. Then after several conversations with the Tenant the Landlord decided to combine both units so the Tenant could rent both the upper and lower units as one.

The Landlord stated she recently accepted a job in a neighbouring city so she is out of town three days a week and is finding she does not have time to manage her properties. She decided to hire a property manager which is why she has issued the Tenant the 2 Month Notice to End Tenancy so the property manager can reside in the unit. She does not currently have a property manager and only began advertising to hire one on Thursday March 17, 2011, five days before today's hearing. The advertisement went in the local paper. She issued the Tenant the 2 Month Notice to End Tenancy and served it in person to her on February 19, 2011.

She confirms the units are still two separate units and that it is still her intention to convert them into one unit. She does not have the permits to install a stairway between the upper and lower floors and has not made application to acquire this permit. When I asked if something had recently happened to cause her to issue the Notice to end the tenancy she stated that it was simply due to her getting her new job. I asked when the new job started and she advised it was November 17, 2010. The Landlord confirmed she did not submit evidence in support of issuing the Notice.

The Tenant testified the renovations were going as planned and on Sunday February 13, 2011, the Landlord called her and confirmed the Tenant would be relocating to another cabin while the hole was being cut in the floor to install the stairs. Later that week, on approximately February 17, 2011, the Tenant's male friend, the Agent as named on the front page of this dispute, called the Landlord and left a message for the Landlord to inform her that the Tenant's washing machine was broken.

The Agent testified the Landlord called back and was very upset that he would be calling and leaving her a message about the washing machine. She accused him of using the laundry facilities while he was not a tenant and demanded to know why he was at the rental unit so much. They got into a heated discussion about what was her business and how much he is at the unit. He stated he is there to assist the Tenant who is a single mother with young boys and he has his own resident elsewhere. Then two days later the 2 Month Notice to End Tenancy was served on the Tenant.

The Landlord stated she agreed the conversation between her and the Agent was heated. She was very frustrated that he would call and leave her a message when he is not her tenant. She wanted to know why he is there every day and if he is helping the Tenant why is he controlling her instead of guiding her to speak for herself.

The Agent then testified that he overheard a conversation outside the rental unit between the Landlord and Tenant where they verbally agreed the Tenant would pay 50% of the natural gas bill. He could not provide a date of when the conversation allegedly occurred.

The Landlord stated that she does not recall this man being present when she discussed the utilities with the Tenant. She questioned why the Tenant had been paying 2/3 of the natural gas bill all this time and never complained about it until after the 2 Month Notice was issued.

The Tenant confirmed she is seeking reimbursement of \$180.00 for amounts she thinks were overpaid on the natural gas bill and are calculated in her evidence beginning April 22, 2010 up to February 2011.

Analysis

Based on the foregoing, the relevant written submissions, and on a balance of probabilities, I find as follows:

Section 49(6)(e) of the Act provides that a landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith to convert the rental unit for use by a caretaker, manager or superintendent of the residential property.

The "good faith" requirement imposes a two part test. First, the landlord must truly intend to use the premises for the purposes stated on the notice to end the tenancy. Second, the landlord must not have a dishonest or ulterior motive as the primary motive for seeking to have the tenant vacate the residential premises.

For example, the landlord may intend to occupy or convert the premises as stated on the notice to end. That intention may however be motivated by dishonest or undisclosed purposes. If the primary motive for the landlord ending the tenancy is to retaliate against the tenant, then the landlord does not have a "good faith" intent.

If the "good faith" intent of the landlord is called into question, the burden is on the landlord to establish that he/she truly intends to do what the landlord indicates on the Notice to End, and that he/she is not acting dishonestly or with an ulterior motive for ending the tenancy as the landlord's primary motive

The Tenant has called the "good faith" requirement in to question and has presented evidence pertaining to a heated discussion between the Landlord and Agent, two days prior to the issuance of the Notice.

I have carefully considered the following testimony and evidence to determine the good faith requirement:

- The Landlord called the tenant six days prior to issuing the Notice to confirm the Tenant would be temporarily relocating while the hole is cut in the floor. This is an indication the renovations were continuing as planned.
- The Landlord does not possess and has made no application to acquire permits that are allegedly required to continue the renovations.
- The Landlord made no effort to hire a property manager until March 17, 2011, a few days prior to the hearing and 26 days after issuing the Notice.
- Not having a property manager hired the Landlord cannot say for certain this new manager would require a place to live or that she/he would require both the upper and lower units.

- The Landlord was involved in an argument with the Agent, the Tenant's male friend who is at the unit on a regular basis, two days before issuing the Notice.

In considering these submissions with regard to good faith intent, I find, on a balance of probabilities, the Landlord's intention of hiring a building manager is undermined by her ulterior, primary motive of evicting the Tenant because the Agent is at the rental unit constantly and is now attempting to conduct business with the Landlord when he is not her tenant. Therefore, I find that the Landlord is attempting to end this tenancy in bad faith and I hereby cancel the 2 Month Notice to End Tenancy.

As neither party provided me with a copy of the written tenancy agreement, I requested the Landlord to fax me a copy, no later than Friday March 25, 2011. A five page fax was received from the Landlord March 24, 2011. I have reviewed the tenancy agreement provided by the Landlord. In order to uphold the principals of natural justice I have attached a copy of the fax to this decision.

In the case of verbal agreements, I find that where verbal terms are clear and both the Landlord and Tenant agree on the interpretation, there is no reason why such terms cannot be enforced. However, when the parties disagree with what was agreed-upon, the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes as they arise.

Therefore after consideration of the evidence before me, specifically that the Tenant has paid 2/3 of the natural gas bill and made no complaint about doing so until being issued a Notice to end tenancy, I find that on a balance of probabilities the agreement between the parties has been that the Tenant was to pay 2/3 of the natural gas. That being said, I find the Tenant has provided insufficient evidence to support her monetary claim of \$180.00, and the claim is hereby dismissed, without leave to reapply.

Conclusion

The 2 Month Notice to End Tenancy issued February 19, 2011, is HEREBY CANCELLED and is of no force or effect.

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: March 24, 2011.

Residential Tenancy Branch

