



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNL, MNDC, LRE

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the tenant for an order to cancel a Two-Month Notice to End Tenancy for Landlord's Use dated June 1, 2011, and purporting to be effective July 31, 2011, an order restricting the landlord's access and a monetary order or damages.

The landlord and tenant appeared and gave testimony in turn.

Issue(s) to be Decided

The issues to be determined based on the testimony and the evidence are:

- Is the Two-Month Notice to End Tenancy for Landlord's Use supported under the circumstances?
- Is the tenant entitled to an order restricting the landlord's access?
- Is the tenant entitled to monetary compensation?

The burden of proof is on the landlord to establish that the Two-Month Notice to End Tenancy for Landlord's Use was issued in good faith. The tenant bears the burden of proof in regards to the remainder of the claims and issues.

Background and Evidence

The tenancy began on January 31, 2011, and the rent is \$650.00. The tenant submitted into evidence of a copy of a Two-Month Notice to End Tenancy for Landlord Use dated June 1, 2011. The landlord had indicated on the form that the reason for the Two Month Notice was because, "*The rental unit will be occupied by the landlord or the landlord's spouse or a close family member... ..*".

The landlord stated that their own residence was up for sale and that they intended to occupy two of the three suites in the rental house. According to the landlord, the tenant's unit is to be used for their home-based business. The landlord also gave

testimony that there were significant problems with the tenancy and various disputes had arisen between the landlord and the tenant.

The tenant raised the issue of bad faith on the part of the landlord and gave testimony that the landlord had other motives for trying to make the tenant vacate and that the landlord's alleged intention to utilize their suite for the business, as stated, was not practical. According to the tenant, another suite in the building would be better suited for the stated purpose than theirs would be. The tenant seeks to have the Notice cancelled.

With respect to the request to restrict the landlord's access, the tenant had concerns about the landlord entering their unit and turning off the porch light or unscrewing the exterior light bulb. The tenant stated that the landlord apparently felt entitled to go through the door into the unit without first giving the written notice required under the Act to access the unit. The tenant was claiming \$500.00 in damages for loss of wages that stemmed from an injury to the tenant's foot, incurred due to the loss of the porch light disabled by the landlord. The tenant was also concerned about the landlord's practice of reading the hydro meter on a monthly basis and insisting on immediate payment for hydro used.

The landlord testified that the porch light is connected to the landlord's hydro circuit and, the tenant ignored all requests not to leave the light on. The landlord acknowledged that the meter in the tenant's unit had to be read manually and the tenant was required to pay the bill based on the usage figures. The landlord took issue with the tenant's hostility and use of foul language.

Analysis

Two Month Notice to End Tenancy for Landlord's Use

Section 49(5) provides that a landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in **good faith** to occupy the rental unit. (my emphasis).

However the tenant has raised the issue questioning the landlord's good faith intentions and indicated that the landlord has an ulterior motive for issuing the Two-Month Notice to End Tenancy.

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. If the primary motive for

the landlord ending the tenancy is to retaliate against the tenant or use this section to resolve problems with the tenancy, then the landlord does not have a “good faith” intent.

The burden is on the landlord to establish the landlord’s good faith intent and I find that the landlord’s testimony pertained to problems that they have encountered with the tenant and tenancy. I find that it appears this fact played a part in the landlord’s decision to issue the Two Month Notice to End Tenancy for Landlord’s Use.

Accordingly I find that the landlord has not succeeded in verifying their good faith intent and therefore I find that the Two Month Notice to End Tenancy for Landlord’s Use dated June 1, 2011 must be cancelled.

Other Issues

With respect to the portion of the tenant’s application requesting an order that the landlord’s access be restricted I find that section 29 of the Act states that a landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless a) the tenant gives permission at the time of the entry or not more than 30 days before the entry; or b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

- (i) the purpose for entering, which must be reasonable;
- (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

Section 28 of the Act protects a tenant’s right to quiet enjoyment and states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord’s right to enter the rental unit in accordance with section 29 *[landlord’s right to enter rental unit restricted]*;
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

In regard to the tenant’s concerns about the landlord entering the premises at will, I find that the landlord must follow the Act and the tenant is entitled to receive 24 hours written notice prior to entering. I order that the frequency should not exceed once per month, unless there is a need to access the unit in case of emergency.

With respect to the landlord's practice of tampering with the light bulbs, I find that section 32 (1) of the Act requires that a landlord 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 landlord's actions in loosening the bulbs violates section 32 of the Act, and this practice must cease.

With respect to the concerns about the landlord's method of assessing and collecting hydro, section 46(6)(b) states that if the tenancy agreement requires the tenants to pay the landlord for utilities and utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them, the debt is considered to be rental arrears. I find that the landlord is at liberty to read the internal meter on a monthly basis, with proper notice under the Act and must serve a written demand showing the usage and amount owed. If the utility remains unpaid for more than 30 days, the Act permits the landlord to issue a Ten Day Notice to End Tenancy for Unpaid Rent under section 46 of the Act, and the tenant will have 5 days to pay to cancel the Notice.

With regard to the tenant's monetary claim for damages that resulted from loss of wages for an injury caused by an accident stemming from the fact that the landlord had unscrewed the exterior light bulb, I find that the tenant bears the burden of proof. The evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking reasonable steps to mitigate or minimize the loss or damage

In this instance, the tenant has established that there was a contravention of the Act by the respondent. However not all of the elements of the test for damage were satisfied by the evidence. Therefore this portion of the application must be dismissed.

With regard to the issue about harassment alleged by both parties, I find that the parties must henceforth restrict all communication between them to written form and avoid conversing directly if possible.

Conclusion

Based on evidence and testimony, I hereby order that the Two Month Notice to End Tenancy for Landlord's Use dated June 1, 2011 is cancelled and of no force nor effect.

Based on the evidence and testimony the landlord is hereby ordered to cease and desist tampering with the exterior lights and ordered to provide proper written notice in compliance with the Act to enter the unit once per month to read the meter and/or inspect the premises. The landlord is ordered to issue detailed written demands for utility payments giving the tenant a full 30 days in which to pay the landlord.

The remainder of the tenant's application, including the monetary claim, is dismissed without leave.

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 18, 2011.

Residential Tenancy Branch