Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

This hearing was convened by way of conference call in response to an application made by the tenant for an order cancelling a notice to end tenancy for landlord's use of property.

The tenant provided evidence of having served the landlord with the Tenant's Application for Dispute Resolution and notice of hearing documents by registered mail on July 13, 2012, and testified that those documents, as well as the evidence provided by the tenant were served in that registered mail package, and I find that the landlord has been served in accordance with the *Residential Tenancy Act.*

The tenant and the landlord attended the conference call hearing, both gave affirmed testimony, and were given the opportunity to cross examine each other on the testimony and evidence provided by the tenant, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Is the tenant's application to cancel a notice to end tenancy for landlord's use of property justified in the circumstances?

Background and Evidence

This month-to-month tenancy began in April, 2006 and the tenant still resides in the rental unit. Rent in the amount of $450.00 per month is payable in advance on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of $225.00 which is still held in trust by the landlord.

The landlord testified to being charged with an offence which resulted in a Judicial Interim Release hearing on April 26, 2012. The landlord stated that he was released on an Undertaking Given to a Justice or a Judge with conditions to keep the peace and be

of good behaviour, attend Court as required, to have no contact directly or indirectly with the landlord's spouse and not to attend at the residence of the landlord and landlord's spouse except on one occasion in the presence of a peace officer to obtain the landlord's personal belongings. A copy of the Undertaking was not provided for this hearing, however the landlord testified that he is now living in his office and has been since April 26, 2012, and provided a Court File number. The next hearing is scheduled for October 31, 2012 to fix a date for trial, and the landlord testified that his lawyer told him that the trial will likely be held in November or December, 2012.

The landlord served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use of Property, and a hearing was held under Residential Tenancy Branch file number 782938 on June 1, 2012. The landlord testified that he received the notice of hearing for that dispute resolution hearing 2 days after the hearing had taken place. The landlord applied for a review of that hearing, but the application was denied. The landlord testified that the Dispute Resolution Officer who considered the application for a review hearing felt that the landlord had provided evidence of the Undertaking as proof that the hearing package wasn't received, but the landlord had actually provided it to show why the landlord required vacant possession of the rental unit.

The landlord served the tenant with another 2 Month Notice to End Tenancy for Landlord's Use of Property on June 29, 2012 by personally handing it to the tenant. The tenant provided a copy of that notice and it is dated June 29, 2012 and contains an expected date of vacancy of September 1, 2012. The reason for ending the tenancy is stated to be: "The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse."

The landlord owns several rental units; 31 in this particular building as well as 4 or 5 other rental units and all are fully rented. The landlord stated that this particular rental unit looks over the main entrance of the complex and over the parking lot, which affords the landlord the opportunity to see what goes on. Some of the rental units are too big, which narrows down the options of which rental unit to move into. When questioned about the landlord's office being an apartment, the landlord testified that it is not a full apartment. The landlord wants to move into this apartment because it is a 2 bedroom, and a 1 bedroom unit would not be suitable because the landlord's son visits and another bedroom is required. The landlord denies that this rental unit was chosen due to the lowest rent being paid by the tenant.

The landlord expressed frustration of the dispute resolution process, having provided evidence at a previous hearing but provided no evidence at all for this hearing. He stated that it is ludicrous that the Residential Tenancy Branch does not provide

evidence from one hearing to another after it was explained to him that it is up to the parties to provide evidence to the hearing officer, not up to the hearing officer to search for evidence in a data base. When asked if the landlord had read the Rules of Procedure, he responded, “Of course not.”

The tenant testified that there were two previous hearings, one on May 10, 2011 dealing with the landlord’s application for an additional rent increase, and one on June 1, 2012 wherein the tenant had applied to cancel a notice to end tenancy for landlord’s use of property. The first hearing resulted in a Decision that the landlord had not established grounds for an additional rent increase, and the second hearing resulted in an order cancelling the landlord’s notice to end tenancy for landlord’s use of property. The landlord did not attend the latter hearing and the tenant testified that the documents for the June 1, 2012 hearing were sent by registered mail to the landlord on May 15, 2012 to the office the landlord has been residing in. The tenant was in that office for a roof-top party in 2006 or 2007 and witnessed a kitchen, fridge, stove, bathroom and somewhat of a living room and stairs going to the roof.

The tenant provided a copy of the Decision of the first hearing but not the second hearing, and testified that except for one rental unit, this rental unit is the lowest rent payable in the complex, and the one that is mentioned in the first Decision as being the lowest may be more now due to a change in tenants in the complex. The tenant also testified that the tenant has a history with the landlord’s managers, and the parties do not get along. The tenant feels that the landlord has not issue the notice to end tenancy in good faith, but has issued it because of the history of the tenant with the managers and because the tenant pays low rent and the landlord is collaborating with the managers to get the tenant to move out.

Analysis

Clearly, a landlord cannot issue a notice to end tenancy because the landlord or the landlord’s managers don’t like the tenant, or because the tenant pays a lower amount of rent than other tenants in the complex; the parties entered into a contract, the tenancy agreement, and are both bound to honour that contract. The *Residential Tenancy Act* allows a landlord to issue a notice to end tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

The landlord has provided no evidence, and I cannot accept that a landlord who owns approximately 35 rental units is unaware of the Rules of Procedure. If the landlord is unaware of the *Act* and the legal requirements of the business the landlord conducts,

the landlord has a responsibility to learn about it, and pleading that the Residential Tenancy Branch ought to already have evidence from another dispute resolution proceeding is simply not sufficient for the landlord's defence to this tenant's application.

Neither party has provided me with the reason(s) that the Dispute Resolution Officer on June 1, 2012 cancelled the notice to end tenancy that was previously issued by the landlord.

The landlord did not provide a copy of the Undertaking Given to a Justice or a Judge, however the landlord did provide oral testimony that included a Court File number, date of the order and the conditions of release, and I am satisfied that the landlord is not permitted by Court order to attend at his own home. I am further satisfied that the office the landlord is currently residing in may not be suitable for a home.

I have reviewed the evidentiary material provided by the tenant, and having heard the testimony of the parties, the issue of *res judicata* is raised, meaning that the Decision of a Dispute Resolution Officer cannot be re-heard and decided by another Dispute Resolution Officer. In this case, the tenant testified that the landlord was served with an application for dispute resolution and notice of hearing on May 15, 2012 by registered mail for a hearing to be conducted on June 1, 2012. The landlord did not attend the hearing but testified that he applied for a review hearing which was denied. The landlord then issued another notice to end tenancy for landlord's use of property. The question before me is whether or not a landlord can issue a notice to end tenancy after a previous notice to end tenancy issued for the same reason was cancelled at a dispute resolution hearing.

In order to properly address the issue of *res judicata*, I find it necessary to refer to the previous hearing Decisions. It is clear in reading the Decisions that the landlord's notice was cancelled, not because the landlord didn't attend, but because the landlord's notice was flawed and contained no reason for issuing it. The landlord testified that the Dispute Resolution Officer who considered the landlord's review application felt that the landlord had provided evidence of the Undertaking as proof that the hearing package wasn't received, but the landlord had actually provided it to show why the landlord required an Order of Possession. I further find that to be untrue; the Decision on that Review Application states that whether or not the landlord attended or knew about the hearing on June 1, 2012 was irrelevant because the landlord's notice was flawed and could not be upheld in any event.

The landlord has issued a new 2 Month Notice to End Tenancy for Landlord's Use of Property with an effective date of vacancy of September 1, 2012. I have reviewed the notice, and I find that it is in the approved form and contains accurate information and a

reason for ending the tenancy that is consistent with the landlord's testimony of requiring the rental unit for his own occupation.

I further find that the issue of *res judicata* does not apply in this case because the facts in the earlier hearing are very different than the facts in this hearing. I further find that the landlord had a legal right to issue another notice to end tenancy after the first one was deemed to be invalid.

I find that the landlord has established grounds for ending the tenancy and the tenant has not established that the landlord's notice was issued in bad faith. The tenant's application for an order cancelling the notice must be dismissed.

Conclusion

For the reasons set out above, the tenant's application for an order cancelling a notice to end tenancy for landlord's use of property is hereby 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: August 2, 2012.

Residential Tenancy Branch