Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL FF – Landlord's application
CNL FF – Tenants' application

Introduction

This hearing was convened to hear matters pertaining to cross Applications for Dispute Resolution filed by the Landlord and the Tenants.

The Landlord filed his application on July 26, 2016 seeking an Order of Possession for landlord's use of the property and to recover the cost of the filing fee.

The Tenants filed their application on July 22, 2016 seeking an order to cancel a 2 Month Notice to end tenancy for landlord's use and to recover the cost of the filing fee.

The hearing was conducted via teleconference and was attended by the Landlord, the Landlord's Agent, the Landlord's Assistant; and the male Tenant R.G. I explained how the hearing would proceed; that I would be asking each participant to take an affirmation to tell the truth; and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process; however, each declined and acknowledged that they understood how the conference would proceed.

When I began to affirm the Tenant I noted how his telephone was causing intermittent problems whereby I was unable to hear every word spoken by the Tenant. In addition, the Tenant indicated he was hearing an echo when others were speaking. The Tenant stated he was calling on a cellphone and did not have access to a landline telephone. The Tenant stated he was not taping the hearing; however, he said there was other electronic equipment turned on near him as he was sitting in his office. I requested that he turn off the other electronic equipment and hang up and dial back into the hearing.

During the time the Tenant was disconnected from the hearing I informed the Landlord, Agent, and Assistant that nothing could be discussed until the Tenant signed back into the hearing. When the Tenant called back into the hearing he indicated there was still a bit of an echo. I asked the Tenant a second time if he was taping the hearing or if he had called in on his computer. At that point the Tenant said he had just turned off "voice speech" or something similar to that and he asked if that helped with the telephone issues. I informed him that his telephone had improved and I advised that I would be proceeding with the hearing.

I continued with affirming the Landlord, Agent, and Assistant. Upon completion the Tenant advised that he had not completed his affirmation. The Tenant was then fully affirmed.

Each application listed two Tenants; however, only one Tenant, R.G. appeared at the hearing. The Tenant submitted he would be representing both Tenants in these matters. Therefore, for the remainder of this decision, terms or references to the Tenants importing the singular shall include the plural and vice versa, except where the context indicates otherwise.

The majority of the Landlord's evidence was submitted by or translated by the Landlord's Agent. No submissions were provided by the Assistant. Therefore, all submissions made by the Agent, and referenced in this Decision, are hereinafter referred to as submissions from the Landlord, except where the context indicates otherwise.

The Landlord confirmed receipt of the Tenant's application for Dispute Resolution; evidence documents; and the notice of hearing documents sometime near the end of July 2016. The Landlord received two additional submissions of evidence from the Tenant, 15 pages on September 6, 2016 and 4 pages on September 9, 2016.

The Tenant confirmed receipt of the Landlord's application for Dispute Resolution and the notice of hearing documents and some evidence sometime near the end of July 2016. The Tenant submitted he received two additional "late" submissions of evidence from the Landlord. The Tenant argued the Landlord's two subsequent evidence submissions were late and therefore they should not be considered. The Tenant testified one package was received on September 2, 2016 and included several documents with the first document dated September 2, 2016. The second package was received on approximately September 6, 2016 and included documents and 3 photographs.

The Tenants asserted the first package of late evidence was originally served to him personally and included a handwritten document with an incorrect date. He stated he returned the package to the Landlord and requested that the date be corrected on that hand written document. The Tenant submitted that when that package was return to him it was taped to his door and the hand written document was no longer part of the package.

The Agent testified the reason their evidence was submitted so late was due to the fact they did not move into her parent's house (the Landlord's house) until September 1, 2016 so they did not have the receipts to submit until then.

The Tenant disputed the Agent's submission and described the dates listed on the Landlord's evidence as follows: the hydro document was dated August 16, 2016; the

Service Canada document had dates of July 31, 2016 and June 10, 2016; the technology school document was dated June 3, 2016.

The Residential Tenancy Branch Rules of Procedure (Rule(s) of Procedure) which govern the matters currently before me came into effect October 26, 2015. The Rules of Procedure relevant to the submissions of evidence are as follows.

Rule(s) of Procedure 2.5 stipulates that to the extent possible, at the same time as the application is submitted to the Residential Tenancy Branch, the applicant must submit to the Residential Tenancy Branch: a detailed calculation of any monetary claim being made; a copy of the Notice to End Tenancy, if the applicant seeks an order of possession or to cancel a Notice to End Tenancy; and copies of all other documentary and digital evidence to be relied on at the hearing.

Rule(s) of Procedure 3.15 provides that to ensure fairness and to the extent possible, the respondent's evidence must be organized, clear and legible. The respondent must ensure documents and digital evidence that are in intended to be relied on at the hearing, are served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. In all events, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than 7 days before the hearing.

Rule(s) of Procedure 3.11 stipulates that if an Arbitrator determines that a party unreasonably delayed the service of evidence, the Arbitrator may refuse to consider the evidence.

Rule(s) of Procedure 3.17 provides that the Arbitrator has the discretion to determine whether to accept documentary evidence that does not meet the requirements set out in the Rules of Procedure.

The Rules of Procedure provide a definition of Days as follows: (c) In the calculation of time expressed as clear days, weeks, months or years, or as "at least" or "not less than" a number of days, weeks, months or years, the first and last days must be excluded.

Upon review of the Residential Tenancy Branch (RTB) file relating to the Landlord's application I note that the Landlord's submission to support his own application was received at the RTB on July 27, 2016; well within the required 14 day requirement. The Tenants' submissions in response to the Landlord's application, as identified by the file number typed on the documents submitted by the Tenants, were received by the RTB on September 6, 2016 and September 7, 2016. Therefore, the Tenants' submissions were received seven and eight days before the hearing. Therefore, I conclude that the second submission from the respondent Tenants was not submitted within the required 7 day period stipulated by Rule of Procedure 3.15.

Upon review of the RTB file relating to the Tenants' application I note that the Tenants' evidence submission to support their own application was received at the RTB with their application on July 22, 2016; within the requirements of the Rules of Procedure. The

Landlord's submissions in response to the Tenant's application, as identified by the file number typed on the documents submitted by the Landlord, were received by the RTB on September 2, 2016 and September 6, 2016. Therefore, the Landlord's submissions were received eleven and seven days before the hearing. The Tenant confirmed receipt of the Landlord's evidence packages on the same dates. Accordingly, I conclude that both packages of evidence submitted by the respondent Landlord were served in accordance with the Rules of Procedure and will be considered as evidence in these proceedings.

Notwithstanding the Tenants' submissions that the Landlord's late evidence should not be considered in these matters, as noted above it was the Tenants' submission that was late and not the Landlord's submission. I note there was insufficient evidence before me that would suggest the Tenants unreasonably delayed in the service of their evidence. Therefore, pursuant to Rule of Procedure 3.17, I have considered all relevant documentary evidence and/or written submissions received on file prior to the commencement of this hearing.

Both parties were provided with the opportunity to present relevant oral evidence, to ask questions, and to make relevant submissions. Although all relevant evidence has been considered in these matters, not all of that evidence is reference in this Decision.

Issue(s) to be Decided

1. Should the 2 Month Notice to end tenancy issued July 8, 2016 be upheld or cancelled?
2. If upheld, should the Landlord be awarded an Order of Possession?

Background and Evidence

The Tenant submitted a copy of a December 10, 2015 RTB Decision issued by me after both parties attended a teleconference hearing before me on December 9, 2015. The aforementioned hearing was scheduled in response to the Tenants' application to dispute a 2 Month Notice to end tenancy which was issued September 22, 2015. In that Decision the Landlord was found to have submitted insufficient evidence to meet the two part test to uphold that Notice and it was cancelled.

Both parties confirmed the terms of this tenancy agreement and the description of the rental unit, as stated in the December 10, 2015 Decision as follows:

> *The parties entered into a fixed term tenancy agreement that began on August 1, 2014 and switched to a month to month tenancy after July 31, 2015. Rent of $1,300.00 was initially payable on the 31st of each month and has subsequently been change to $1,291.50 being paid on the 1st of each month. On or shortly before August 1, 2014 the Tenants paid $650.00 as a security deposit.*

> *The rental unit was described as being a basement suite which is located in half of the basement of a single detached home. The other half of the basement has at times been occupied by the Landlord's son and daughter in-law and by ESL (English as a second language) students. The Landlord and his family reside in the upper level of the house.*
>
> [Reproduced as written]

On July 8, 2016 the Tenants were personally served a subsequent 2 Month Notice to end tenancy. As per the evidence submissions, the July 8, 2016 2 Month Notice was issued on the prescribed form pursuant to the *Residential Tenancy Act (*the *Act),* s. 49. That Notice listed an effective date of 30 Sept. 2016 and the following reason for issuing the Notice:

> *The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child or the parent or child of that individual's spouse)*

[Reproduced as written excluding the circle that was hand drawn around the word child]

The Landlord submitted evidence that the Agent had a baby on November 29, 2015. Upon reviewing their child care needs; their personal financial situation; and the fact that her spouse would be attending school, the Agent stated they decided to accept her parent's offers to reside in their basement suite free of charge. The Landlord also offered to provide child care to assist her and her spouse while they were living in the same home. The Agent testified they preferred to have some privacy which is why they decided to accept the offer to move into the self-contained suite.

The Agent submitted they moved out of their condo effective September 1, 2016 with the intent on moving into the Landlord's self-contained basement suite where the Tenants currently reside. She pointed to their photographs which displayed her furniture, the contents of their condo, currently piled in the Landlord's living room and dining room. The Agent stated they rented out their condo effective September 1, 2016 to support their finances while her spouse was attending school in addition to benefiting from the child care offered by her parents.

The Landlord submitted the following documentary evidence in support of reasons for issuing the 2 Month Notice: a moving truck rental receipt dated August 27, 2016; proof that the Agent's hydro account for their condo was cancelled August 31, 2016; Canada Post mail forwarding from September 2, 2016 to January 1, 2017; proof that the Agent's address on her drivers' license and insurance was changed to the Landlord's address; proof of the Agent's return to work effective November 28, 2016; and confirmation of her spouse's attendance at school for the periods of May 8, 2017 to June 16, 2017 and September 5, 2017 to October 27, 2017.

The Tenant testified and argued the Landlord had the capacity to accommodate his daughter and son in-law without inconveniencing them. He asserted the Agent and her spouse could reside in the suite on the other side of the basement where her brother

and his wife and the ESL students had resided in the past. He argued that other side of the basement had been unoccupied since mid-May 2016.

The Tenant asserted that if the Agent and her spouse needed more privacy the Landlord could serve the tenants who reside in the laneway house with a notice to end tenancy. The laneway house was described as being a carriage house located on the same property as the House where the Landlord and Tenants reside.

In addition, the Tenant submitted that he saw the Landlord and another ESL student arrive with a suitcase on September 1, 2016. He submitted the Landlord had accommodated two ESL students in the Landlord's living space, the upper levels of the house, in the past and argued he could do so again so the Agent and her family could reside in the other side of the basement.

The Landlord submitted they currently have two ESL students who are occupying the rental space on the other side of the basement. They stated the ESL students are enrolled in a 4 year study program which began in September 2015. The Landlord testified the students return to their home country when school is not in session in the summer and return when school starts up again. The Landlord submitted one student first arrived December 1, 2015 and the other on September 15, 2015. Both have returned for the start of the 2016 school term.

The Landlord testified the laneway house has two bedrooms and one bathroom. The tenant(s) of the laneway house pay monthly rent of $1,260.00 plus hydro costs. They noted that the Tenants currently pay monthly rent of $1,291.50 which includes utilities.

Analysis

The *Residential Tenancy Act* (the *Act)* and the Residential Tenancy Branch Policy Guidelines (Policy Guideline) stipulate provisions relating to these matters as follows:

Section 49 (3) of the *Act* states 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.

Residential Tenancy Policy Guideline 2 sets out the two part test for the "good faith" requirement as follows:

1) The landlord must truly intend to use the premises for the purposes stated on the notice to end the tenancy; and
2) the landlord must not have a dishonest or ulterior motive as the primary motive for seeking to have the tenant vacate the residential premises.

Where a 2 Month Notice to End Tenancy comes under dispute, the Landlord has the burden to meet or satisfy a two part test as set forth and listed above. I concur with this policy and find it relates to the matters currently before me.

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*.

After careful consideration of the foregoing; documentary evidence; and on a balance of probabilities I find pursuant to section 62(2) of the *Act* as follows:

Upon review of the 2 Month Notice to End Tenancy issued July 8, 2016, I find that Notice to be completed in accordance with the requirements of section 52 of the Act and I find that it was served upon the Tenants in a manner that complies with section 89 of the Act.

The Notice currently at issue was served approximately 9.5 months after the first notice to end tenancy was issued on September 22, 2015. While the two Notices state they were issued for the same reason; that being the rental unit will be occupied by the landlord or the landlord's close family member; I find there was sufficient evidence before me to support there was a change in the Landlord's circumstances involving the birth of their grandchild and the change in their daughter's family's financial situation, as supported by the submissions of a new fact pattern and supporting documentary evidence. Therefore, I conclude there was insufficient evidence to prove the Landlord continued to have a dishonest or ulterior motive as the primary motive for seeking to have the Tenants vacate the residential premises at this time.

Notwithstanding the Tenants' submissions that the Landlord has the capacity to accommodate the Landlord's daughter and her family without inconveniencing the Tenants, I conclude that capacity would involve inconveniencing the Landlord, their ESL students, and/or the tenant(s) of the laneway house. That is to say either the ESL students would have to move out of their space and in with the Landlord, or the tenant(s) of the laneway house would have to move out.

I find the Landlord's submissions that they wish to have their grandchild, daughter, and her spouse living the basement suite in their house to be reasonable given the circumstances presented to me during the hearing. I make that finding in part after taking into consideration that the tenant(s) in the laneway house pay for hydro while the Tenants do not. I also considered the fact that the laneway house tenants pay a monthly rent of $30 less than the Tenants.

Based on the above, I find the Landlord has provided sufficient evidence to prove he truly intends to use the premises for the purposes stated on the notice to end the tenancy issued July 8, 2016. Specifically, the Landlord's daughter, her spouse, and the Landlord's grandchild would be occupying the rental unit. As such I find the Tenants submitted insufficient evidence to cancel the 2 Month Notice issued July 8, 2016 and their application for Dispute Resolution is dismissed, without leave to reapply.

As the Tenants were not successful with their application, I declined to award recovery of their filing fee.

As stated above, the Landlord provided sufficient evidence to prove the merits of the 2 Month Notice to end tenancy issued July 8, 2016. Accordingly, I grant the Landlord's application and find this tenancy will end on September 30, 2016, the effective date of the 2 Month Notice. Accordingly, I award the Landlord an Order of Possession effective **September 30, 2016 at 1:00 p.m**. after service upon the Tenants. In the event the Tenants do not comply with that Order it may be enforced through Supreme Court.

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) *[starting proceedings]* or 79 (3) (b) *[application for review of director's decision]* by one party to a dispute resolution proceeding to another party or to the director.

The Landlord has succeeded with their application; therefore, pursuant to section 72(1) of the *Act,* I award recovery of the **$100.00** filing fee. Accordingly, I hereby order the Tenants to pay the Landlord $100.00 as recovery of the filing fee, forthwith.

The parties are reminded of the provisions of section 72(2)(b) of the *Act*, which authorizes a landlord to deduct from a tenant's security deposit any amount the director orders a tenant to pay to a landlord, which in these circumstances is $100.00.

Conclusion

The Landlord was successful with proving the merits of the 2 Month Notice and was awarded an Order of Possession effective September 30, 2016. The Tenants' application was dismissed, without leave to reapply.

This decision is final, legally binding, and 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: September 15, 2016

Residential Tenancy Branch