



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, CNC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the "2 Month Notice") pursuant to section 49; and
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 47; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence. Both parties were given full opportunity to give affirmed testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

Issue(s) to be Decided

Is the tenant entitled to have the landlord's 2 Month Notice dismissed? If not, is the landlord entitled to an order of possession?

Is the tenant entitled to have the landlord's 1 Month Notice dismissed? If not, is the landlord entitled to an order of possession?

Is the tenant authorized to recover the filing fee for this application from the landlord?

Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on January 1, 2014 on a month-to-month basis. Rent in the amount of \$1,900.00 is payable on the first of each month. The tenant remitted a security deposit in the amount of \$950.00 at the start of the tenancy. The tenant continues to reside in the rental unit.

On November 27, 2016 the landlord discovered an individual residing in a recreational vehicle in the back yard of the residential property. The landlord observed an extension cord leading from the recreational vehicle to the rental unit. The landlord issued a warning letter to the tenant

directing her to remove the recreational vehicle from the residential property. The tenant confirmed receipt of this warning letter, dated November 28, 2016.

2 Month Notice

The tenant acknowledged receipt of the landlord's 2 Month Notice dated November 28, 2016 by way of registered mail. The grounds to end the tenancy cited in that 2 Month Notice were;

- the rental unit will be occupied by the landlord or the landlord's close family member

In relation to the 2 Month Notice, the landlord initially testified that he needs the rental unit for his own use because he is going to live there. The landlord then testified that his relatives from India are coming. He stated that one of his relatives will be attending Douglas College and will live in the rental unit. When reminded of his earlier testimony, the landlord clarified that he would be living alongside his relatives in the rental unit as this would be more economical than living in his current residence.

1 Month Notice

The tenant acknowledged receipt of the landlord's 1 Month Notice dated November 29, 2016 by way of posting to her rental unit door. The grounds to end the tenancy cited in that 1 Month Notice were;

- the tenant has allowed an unreasonable number of occupants in the unit/site
- the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord
- the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord
- the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk
- the tenant has engaged in illegal activity that has, or is likely to damage the landlord's property
- the tenant has engaged in illegal activity that has, or is likely to jeopardize a lawful right or interest of another occupant or the landlord
- tenant has assigned or sublet the rental unit/site without landlord's written consent

The landlord testified that the 1 Month Notice was issued primarily due to the recreational vehicle and attached extension cord. The landlord contends that the method used to provide electricity is a fire hazard and puts the landlord's property at significant risk. The landlord testified that the tenant has unauthorized people living in the rental unit. The landlord indicates the tenant or a person permitted on the property by the tenant moved some lumber in the backyard belonging to the landlord. The landlord contends this action unreasonably disturbed the landlord.

In reply, the tenant testified that after receiving the warning letter and 1 Month Notice the recreational vehicle was removed from the backyard and parked on the street outside the rental unit. The tenant acknowledged she has tenants living downstairs but contends the landlord was well aware of this arrangement as he had verbally approved this sublet some time ago. The tenant acknowledged that she moved the lumber, as it was rotting and contained nails, which are unsafe.

Analysis

2 Month Notice

The *Act* allows a landlord to end a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

The tenant questioned the good faith of the landlord by filing her application to cancel the 2 Month Notice. When the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to use the rental unit for the purposes stated on the 2 Month Notice.

In relation to the 2 Month Notice, I find the landlord's testimony wavered and therefore lacked credibility. I find the landlord has provided insufficient evidence to show on a balance of probabilities that at the time of issuing the 2 Month Notice, the landlord sought to end the tenancy for the owner's occupancy of the rental unit. In the absence of a travel itinerary, Douglas College registration papers, or witness testimony/statement verifying relatives are coming from India to attend Douglas College and move into the rental unit, in conjunction with the landlord's wavering testimony, I find it more probable that the landlord sought to end the tenancy in an effort to end the ongoing dispute between the landlord and the tenant.

Based on these reasons I find the landlord has not acted in good faith in issuing the 2 Month Notice. Accordingly, the 2 Month Notice is set aside.

1 Month Notice

The onus is on the landlord to prove the reasons listed on the 1 Month Notice took place by the tenant.

1. the tenant has allowed an unreasonable number of occupants in the unit/site

The landlord testified that the tenant has unauthorized people living in the rental unit; however the landlord did not provide sufficient evidence to establish the number of occupants. As the number of occupants remains unknown, I cannot determine the number of occupants is unreasonable. For these reasons I find the landlord failed to meet his onus to establish the tenant has allowed an unreasonable number of occupants in the unit/site.

2. the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord

I find the rearranging of lumber or even removal of lumber does not constitute an unreasonable disturbance. In relation to the occupant of the recreational vehicle, I find the landlord has provided insufficient evidence to establish how this occupant has significantly interfered or unreasonably disturbed another occupant or landlord. The landlord does not reside on the premises and the landlord does not pay for utilities. The mere presence of the occupant in the recreational vehicle is not evidence enough of interference or disturbance. I find the landlord has failed to prove his burden and the above ground is not adequate for the purpose of ending this tenancy.

3. the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord

I find the landlord has provided insufficient evidence to establish the extension cord jeopardizes the health or safety of another occupant or landlord. Although it is the landlord's position that the extension cord poses a safety concern he has failed to provide documentary evidence or expert witness testimony to verify this. Further the landlord has failed to identify what lawful right has been jeopardized by the existence of the recreational vehicle and extension cord.

4. the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk

Based on the evidence presented, I am not satisfied the extension cord is a fire hazard thereby putting the property at risk. It is not enough for the landlord to say it is a fire hazard; the landlord must substantiate this allegation with supporting evidence.

5. the tenant has engaged in illegal activity that has, or is likely to damage the landlord's property
6. the tenant has engaged in illegal activity that has, or is likely to jeopardize a lawful right or interest of another occupant or the landlord

The landlord has failed to establish the tenant has engaged in illegal activity, a serious violation of federal, provincial or municipal law. Therefore I find the landlord has failed to prove his burden in establishing the above ground.

7. tenant has assigned or sublet the rental unit/site without landlord's written consent

There is no dispute the tenant sublet the downstairs to tenants without written consent. However the tenant contended that the landlord verbally consented to this arrangement some time ago.

The landlord did not respond to this allegation nor did he dispute this during the hearing. Based on the balance of probabilities, I find the landlord has acquiesced to the sublet and has provided insufficient reasons for now objecting to the subletting.

Overall, I find the landlord has failed to meet his burden in proving the reasons listed on the 1 Month Notice. The 1 Month Notice is set aside. As the tenant was successful in this application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for the application.

Conclusion

The tenant's application to cancel the 2 Month and 1 Month Notices are upheld. The tenancy will continue until it is ended in accordance with the *Act*.

The tenant is entitled to deduct \$100.00 from future rent in satisfaction of the monetary award to recover the filing fee.

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: January 16, 2017

Residential Tenancy Branch