



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, O, FF, CNC

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) filed by the Tenant under the *Residential Tenancy Act* (the “Act”), seeking to cancel a Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Two Month Notice”), an Order for the Landlord to comply with the *Act*, the *Residential Tenancy Regulation* (the “Regulation”), or the tenancy agreement, recovery of the filing fee, and other matters.

The Tenant also submitted an Amendment to an Application for Dispute Resolution (the “Amendment”) to the Residential Tenancy Branch (the “Branch”) on September 20, 2017, stating that they received a new One Month Notice to End Tenancy for Cause (the “One Month Notice”) on September 10, 2017, and wished to dispute this One Month Notice at the same time as a related claim. In the hearing the Tenant testified that the Landlord was sent a copy of the Amendment by registered mail on September 20, 2017, and the Landlord confirmed receipt of the Amendment. Given that the One Month Notice pertains to the same parties and the same rental unit as the Application, and relates to whether or not the Tenancy will continue, I found that the Amendment was a related claim and the Application was amended accordingly.

I note that Section 55 of the *Act* requires that when a tenant submits an Application seeking to cancel a notice to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with Section 52 of the *Act*.

The hearing was convened by telephone conference call and was attended by the Tenant and the Landlord, both of whom attended at the scheduled time, ready to proceed. Both parties provided affirmed testimony and were given the opportunity to

present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer only to the relevant facts and issues in this decision.

Preliminary Matters

At the outset of the hearing I asked the Tenant to clarify if they were seeking to dispute other matters as indicated on the Application and if so, to provide details regarding these matters. The Tenant stated that they were only seeking to cancel both notices to end tenancy, recover the \$100.00 filing fee, and obtain an Order for the Landlord to comply with the tenancy agreement. As a result, the Tenant withdrew their Application regarding other matters and remains at liberty to reapply.

Although the hearing proceeded in a civil manner, the Landlord was cautioned on several occasions for interrupting and for continually discussing matters unrelated to the Application.

Issue(s) to be Decided

Is there a valid reason to cancel the Two Month Notice under the *Act*?

Is there a valid reason to cancel the One Month Notice under the *Act*?

If the Tenant is unsuccessful in seeking to cancel either the One Month Notice or the Two Month Notice, is the landlord entitled to an order of possession pursuant to Section 55(1) of the *Act*?

Is the Tenant entitled to an order for the Landlord to comply with the *Act*, *Regulation*, or tenancy agreement?

Is the Tenant entitled to monetary compensation to recover the filing fee pursuant to section 72 of the *Act*?

Background and Evidence

Two notices to end tenancy were served by the Landlord on the Tenant, both of which the Tenant disputes.

The first notice to end tenancy was a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") dated October 12, 2017. Both parties agreed that this date was an administrative error and should have been August 12, 2017. The Two Month Notice indicates that the rental unit will be occupied by the Landlord or the Landlord's close family member and has an effective vacancy date of October 15, 2017. The Landlord testified that the Two Month Notice was posted to the door of the Tenant's rental unit on August 12, 2017, and the Tenant acknowledged receipt of the Notice on August 14, 2017.

The second notice to end tenancy was a One Month Notice to End Tenancy for Cause (the "One Month Notice") dated September 10, 2017. The One Month Notice has an effective vacancy date of October 10, 2017, and states that the reason for ending the tenancy is because the Tenant or a person permitted on the property by 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 parties agreed that the One Month Notice was personally served on the Tenant on September 10, 2017.

The Tenant provided testimony and substantial documentation in the form of telephone conversation recordings and written communications between the Tenant and Landlord, indicating that both before and after the service of the above noted notices to end tenancy, the Landlord was attempting to have the Tenant renegotiate the tenancy agreement under different terms, at a higher rate of rent. The Landlord did not dispute that they had attempted to negotiate a new agreement with the Tenant excluding utilities and increasing the rent, however, the parties were in disagreement regarding the purpose for these negotiations.

The Tenant testified that as soon as the Landlord took ownership of the property, the Landlord immediately refused to pay for the utilities included under the tenancy agreement and attempted to increase the rent. The Tenant submitted a copy of the tenancy agreement, which was signed by the Tenant and the previous owner of the property on September 24, 2008. The tenancy agreement indicates that the month-to-month tenancy commenced on October 15, 2008, and that rent in the amount of \$700.00 is due on the 15th of each month. The tenancy agreement also indicates that the monthly rent includes the following utilities and amenities: water, electricity, heat,

cablevision, free laundry, garbage collection, and parking for 1 vehicle. The Tenant also submitted a copy of a notice received from the previous owner on July 27, 2017, indicating that the property had been sold to the Landlord, confirming the rent amount of \$700.00, and directing the Tenant to make all rent payable to the Landlord.

The Tenant stated that they received numerous e-mails regarding the renegotiation of the terms of the tenancy agreement from the Landlord, one of which was on August 3, 2017. The Tenant stated that in this e-mail, the Landlord advised them that utilities would not be paid for, that rent would be increased to more closely align with market rental prices and that if they could not afford to pay the rent increase, the Tenant should consider the e-mail as two months' notice to vacate the rental unit. The Tenant provided a copy of the e-mail for consideration.

The Tenant stated that when they refused to agree to any changes to their tenancy agreement, the Landlord issued two different notices to end tenancy in an effort to get the Tenant to agree to the changes. The Tenant testified that after the issuance of both notices to end tenancy, the Landlord continually attempted to alter the terms of the tenancy agreement and that the Landlord stated that the tenancy could continue if the Tenant agreed to a higher rent and the exclusion of utilities. The Tenant provided copies of e-mails and recordings of telephone conversations between themselves and the Landlord in support of their testimony. As a result, the Tenant argued that the Two Month Notice and the One Month Notice should be cancelled as they were both issued in bad faith and under false pretenses.

The Landlord disputed that the above noted utilities and amenities were included in the tenancy agreement. The Landlord testified that at the time of purchase, the previous owner had provided them with a copy of the tenancy agreement which indicated that only parking, heat and water were included with rent. The Landlord did not submit a copy of this tenancy agreement for consideration in the hearing.

The Landlord stated that after the purchase of the property, their child was transferred to a post-secondary institute close to the rental property. The Landlord testified that their child attempted to find market rent in the area but could not find anything affordable; therefore the rental unit was required for their child's use and residence. The Landlord admitted that after the Two Month Notice was issued, they agreed that the tenancy could continue if the Tenant paid more rent and their own utilities, as long as the increased rent would provide sufficient income for their child to rent another place. No documentary evidence was submitted in support of the testimony provided by the Landlord.

The Landlord also did not provide any evidence or testimony to indicate that the Tenant had engaged in illegal activity or that any illegal activity engaged in by the Tenant jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the Landlord. The only testimony provided by the Landlord regarding this notice related to a dispute between the Landlord and Tenant regarding a key to the rental unit. The Landlord also admitted that they had selected the incorrect reason for issuing the notice to end tenancy. The Tenant also denied engaging in any illegal activity.

Analysis

I have reviewed all relevant documentary evidence and oral testimony and in accordance with section 88 of the *Act*, I find that the Tenant was served with the Two Month Notice on August 14, 2017, the date they acknowledged receipt. I also find that the Tenant was served with the One Month Notice on September 10, 2017, the date they acknowledged receipt.

Section 47 of the *Act* states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord.

The Landlord failed to provide any evidence that the Tenant has engaged in illegal activity, or that any illegal activity engaged in by the Tenant has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the Landlord. As a result, I find the Landlord has failed to prove they have cause to end the tenancy and the One Month Notice dated September 10, 2017, is cancelled and of no force or effect.

Section 49 of the *Act* states that subject to section 51 [*tenant's compensation: section 49 notice*], a landlord who is an individual may end a tenancy in respect of a rental unit by giving notice to end the tenancy 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 defines "good faith" as an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage.

The Guideline goes on to say that if evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive then the question as to whether the landlord had a dishonest purpose is raised.

When the good faith intent of the landlord is called into question, the burden rests with the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The Guideline also requires the landlord to establish that they do not have another purpose that negates the honesty of intent or demonstrates they do not have an ulterior motive for ending the tenancy.

Based on the evidence and testimony before me, I prefer the tenant's submissions regarding

Although the Landlord provided testimony in contrast to that of the Tenant, ultimately I find the Tenant's testimony and substantial supporting documentation more persuasive and reliable than the Landlord's unsupported testimony. As a result, I am not satisfied on a balance of probabilities that the reason the Two Month Notice was issued was because the Landlord or a close family member of the Landlord intends, in good faith, to occupy the rental unit and I find the Landlord has failed to prove they have cause to end the tenancy. As a result, the Two Month Notice is cancelled and of no force or effect.

Based on the above findings, I order that the tenancy continue until it is ended in accordance with the *Act*. As a result, I will now turn my mind to whether the Tenant is entitled to an Order for the Landlord to comply with the *Act*, *Regulation*, or tenancy agreement.

Although the Landlord testified that their copy of the tenancy agreement is different than the one provided by the Tenant for consideration in the hearing, the Landlord did not provide their copy for my consideration. As a result, I find the written tenancy agreement in the documentary evidence before me more persuasive than the Landlord's unsupported testimony regarding what is included in the Tenant's rent. As a result, I find that the Tenant is entitled to the inclusion of water, electricity, heat, cable, free laundry, garbage collection, and parking for 1 vehicle with their \$700.00 rent.

Pursuant to section 72 of the *Act*, I also find that the Tenant is entitled to a Monetary Order in the amount of \$100.00 for the recovery of the filing fee.

Conclusion

The One Month Notice dated September 10, 2017, and the Two Month Notice with an amended date of August 12, 2017, are cancelled and of no force or effect. As a result, I Order that the tenancy continue until it is ended in accordance with the *Act*.

Without limiting the Landlord's right to seek annual or additional rent increases under the *Act* and *Regulations*, I Order that the Landlord comply with the tenancy agreement as outlined above for the duration of the tenancy, and provide the Tenant with possession of the rental unit, water, electricity, cable, free laundry, garbage collection, and parking for 1 vehicle for a monthly rental amount of \$700.00.

The Tenant is also entitled to \$100.00 for the recovery of the filing fee, which I Order them to deduct from next month's rent.

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: October 19, 2017

Residential Tenancy Branch