Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL DRI FFT LAT LRE OLC RR

Introduction

This decision is in respect of the tenants' application for dispute resolution made under the *Residential Tenancy Act* (the "Act"), which was filed on November 21, 2018. The tenants seek the following remedies under the Act:

1. an order cancelling a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice");
2. to dispute a rent increase;
3. to request a lock change authorization for the tenants;
4. to restrict or suspend the landlords' right to enter the rental unit;
5. to order the landlords to comply with the Act, the regulations, or the tenancy agreement;
6. an order reducing the rent for service or facilities required by tenancy agreement; and,
7. an order for compensation for recovery of the filing fee.

A dispute resolution hearing was convened on January 8, 2019, and the landlords and three of the four tenants attended. The parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. The parties did not raise any issues regarding the service of notices or documentary evidence.

While I have reviewed all oral and documentary evidence submitted that met the requirements of the *Rules of Procedure,* under the Act, and to which I was referred, only evidence relevant to the issues of this application are considered in my decision.

I note that section 55 of the Act requires that when a tenant applies for dispute resolution 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's notice to end tenancy complies with the Act.

Issues

The issues that I must decide are whether the tenants are entitled to

1. an order cancelling the Notice;
2. an order regarding a dispute of a rent increase;
3. an order authorizing the tenants to change the locks;
4. an order restricting or suspending the landlords' right to enter the rental unit;
5. an order for the landlords to comply with the Act, regulations or the tenancy agreement;
6. an order reducing the rent for service or facilities required by a tenancy agreement; and,
7. an order for compensation for recovery of the filing fee.

If I find that the tenants are not entitled to an order cancelling the Notice, then I must consider whether the landlords are entitled to an order of possession.

Background and Evidence

Re Two Month Notice to End Tenancy for Landlord's Use of Property and Rent Increases

The landlord (P.L.) testified that he issued the Notice because the landlords "need to take back" the rental unit so that his daughter, a single mother with an autistic son, can move into the rental unit. This is, testified the landlord, the "main reason" for issuing the Notice. He further testified that the Notice was served on November 21, 2018 in-person on an adult who appears to reside in the rental unit, and that the Notice indicated an end of tenancy date of January 31, 2019. A copy of the Notice was submitted into evidence.

The tenants testified that the Notice is simply "another form of harassment" that the landlord has inflicted on the tenants over many months. The tenant (W.P.) testified that the Notice was, rather coincidentally, issued a day after the tenants sent a letter to the landlord in which they attempted to resolve several issues. This purported letter

was not submitted into evidence; the landlords did not dispute that this letter was sent to them.

The tenant referred to the “rent increases” that the landlord added on to the statements of accounting (which were submitted into evidence) for having additional people in the rental unit, and the landlord’s “threats” to evict the tenants if they do not pay the additional charges. Monthly rent increased to $1,694.16 (in accordance with the Act, I note) on August 1, 2018. However, the landlords charged the tenants what is referred to as “Premium charges for 2 guests stay. $3.00 each for each night for 30 days” on the Statement of Account in the amount of $180.00 for September 2018 and again for October 2018, and an additional premium charge of $186.00 for November 2018.

At the bottom of the statement there is the following statement, typed in bold font (reproduced as written):

> Note: This note serves to inform you and your party. If the outstanding premium charges for your guests staying in the house is not settled on or before October 27, 2018, we have no choice but we would take over the occupancy of the main unit at [address of rental unit]

In rebuttal, the landlord commented that the Notice was issued and served legally and had no further comment regarding the Notice. The landlords did not rebut or make any submissions regarding the premium charges.

Re Compliance and Rent Reduction Order for Garage Door

The tenants’ application seeks an order that the landlord comply with the tenancy agreement and an order reducing rent for services agreed to in the tenancy agreement but not provided. Essentially, these are linked to the inability of the tenants, and specifically tenant W.P., to open the garage door.

The tenant testified that the garage door to the two-car garage used to be opened by a keypad located externally just to the left of the garage door. She explained that when the tenancy began the garage door could be opened by keypad. However, in 2015, the keypad stopped working and the landlord did not replace or fix it. The tenant has severe mobility issues, requiring the use of a cane 24/7 and frequently uses her motorized scooter to get around. The scooter is parked in the garage, and without the external keypad, the tenant must go into the house, into the garage, open the door,

drive the scooter out, go back into the garage, close the garage door, and then exit through the house. She argued that she ought to have the same access as she did when they moved into the rental unit.

The landlord testified that the keypad was inoperable in 2015 and, after an unsuccessful attempt to fix the keypad, replaced and resolved the accessibility issue by providing a remote-control unit to the tenants. “They have a remote control,” he said.

In rebuttal, the tenants testified that the keypad was removed because of complaints from the tenants and as punishment. They testified that they do not have, and were never given, a remote control for the garage door.

Re Order Restricting Landlords’ Entry and Order for Lock Change Authorization

The tenants testified about an incident that occurred in “2014, maybe 2015” when the tenants were vacationing in México. The landlord, who lives next door and worked with the tenant’s husband, was aware that they were away on vacation. Observing a strange car parked near the house, and suspecting a break-in, the landlord called the police. The landlord came into the house. According to the tenants, their son and his girlfriend were in the house, but the landlord said that he was unaware of who these people were, hence his calling the police.

The tenants testified about other times that the landlord “comes into the garage anytime he wants to” and also bangs on the door, rings the door bell incessantly, and yells through the mail slot. I note that the tenant provided a demonstration of the landlord’s yelling.

The landlord testified that the garage is a common area and as such he has the right to enter it whenever he so chooses. In addition, he testified that he did not go into the house on the night in question back in 2015, and that he never otherwise enters the house without proper notice under the Act. He added that if the tenants want to change the locks, there is “nothing I can say.” Finally, he commented that he does not bang on the door and that the tenants’ statements are totally false.

Regarding entering the rental unit, the landlord testified that he provides proper notice under the Act, and that during one such inspection in 2018 he observed that the tenants were nursing a (presumably injured) crow. Submitted into evidence was a letter from the landlords to the tenants in which he pointed out the tenants’ violation of

the *Wildlife Act* in nursing the bird, and that they would have to put an end to this illegal activity. He also pointed out the tenants' collection of birds, and the birds are referenced in the inspection letter in mid-2018. Birds could be heard chirping in the background during the beginning of the hearing.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

1. Order Cancelling the Notice

Where a tenant applies to dispute a Two Month Notice to End Tenancy for Landlord's Use of Property the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice is based.

In this case, the landlord testified that the Notice was issued under section 49 (1) of the Act, which 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."

The tenants disputed the ground on which the Notice was issued, submitting that it was one more example of a long series of "harassment" by the landlord. They referred to previous threats by the landlord to evict them and pointed out that the Notice was issued the day immediately after they gave a letter (not submitted into evidence, I note) to the landlord attempting to resolve multiple issues. Of particular note is the statement in the Statement of Account regarding the landlord's intention to "take over occupancy" of the house should the tenants not pay the premium charges. I also note that the landlord had previously issued notices to end the tenancy, but that he did not follow through on enforcing these notices.

The tenants have, in effect, disputed the "good faith" requirement of this section, which is the question to which I must now consider.
Good faith is 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. (See pages 1 and 2 of *Residential Policy Guideline 2. Good Faith Requirement when Ending a Tenancy.*) Moreover, a claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use

the rental unit for the purposes stated on the Notice. A landlord's intentions might be documented by, for example, a Notice to End Tenancy at another rental unit, or, an agreement for sale and the purchaser's written request for the seller to issue a Notice to End Tenancy.

If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice. The landlord must establish that they do not have another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive for ending the tenancy.

Based on the testimony of the tenants and of the landlord, and, most tellingly, the statement on the Statement of Account, I find that the issuing of the Two Month Notice to be highly suspect. Coupled with the landlord's illegal "premium charges"—to which I will turn shortly—and his attempt to collect on those charges and taking into account the landlord's previous attempt to end the tenancy, I find that there is likely an ulterior motive for issuing the Notice.

Taking into consideration all the oral testimony and the documentary evidence presented before me, I do not find that the landlords have proven on a balance of probabilities that they intend for their daughter to occupy the rental unit in good faith as stated as a ground on which the Notice was issued.

As such, I hereby order that the Notice, dated November 21, 2018, is cancelled and of no force or effect. The landlord is not entitled to an order of possession under section 55 of the Act. This tenancy will continue until it is ended in accordance with the Act.

2. Order re Dispute of a Rent Increase

A landlord may only charge rent, set out in a tenancy agreement and subject to any rent increases made in accordance with the Act, from a tenant. They may not charge other fees, other than any such fees or charges as set out in a tenancy agreement. "Rent" is defined in section 1 of the Act to mean "money paid or agreed to be paid, or value or a right given or agreed to be given, by or on behalf of a tenant to a landlord in return for the right to possess a rental unit, for the use of common areas and for services or facilities, but does not include any of the following: (a) a security deposit; (b) a pet damage deposit; (c) a fee prescribed under section 97 (2) (k)."
The landlords presented no evidence by which the tenants agreed to pay money for additional occupants. There is nothing in any of the several tenancy agreements

tendered into evidence whereby the tenants agreed to pay so-called “premium charges” for guests.

The landlord has, in effect, attempted to circumvent the Act by making an illegal demand for “premium charges” for additional guests. If the landlords do not wish for the tenants to have additional guests or occupants, they must either (1) modify the existing tenancy agreement—with the consent of the tenants—to restrict the number of additional occupants or guests, or (2) attempt to address any issues resulting from having extra occupants or guests through other means afforded under the Act.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenants have met the onus of proving their claim for an order addressing their dispute of the additional “premium charges,” which I shall categorize as a rent increase.

[Note: the following paragraph was added on January 14, 2019 and the following paragraph deleted as a result of a Request for Clarification dated January 14, 2019]

There is, however, no substantive evidence proving that the tenants actually paid the premium charges.

~~I order that the landlord forthwith cease from charging the tenants any additional monies related to the presence of additional occupants or guests in the rental unit. In addition, I hereby order that the tenants may withhold $546.00 from their rent for February 2019, which represents the illegal charges for September ($180.00), October ($180.00), and November 2018 ($186.00).~~

3. Order for Lock Change Authorization

After the tenants testified as to reasons why they sought an order authorizing them to change the locks, the landlord responded that there is “nothing I can say.” I accept that the landlord’s response is acquiescence in respect of this aspect of the tenants’ claim.

As such, pursuant to section 31(3) of the Act, I hereby grant an order permitting the tenants to change the locks of the rental unit. However, this is restricted to the locks of the rental unit and does not include any locks of doors into any common area.

4. Order Restricting/Suspending Landlords' Right to Enter the Rental Unit

While the tenants testified about an incident in 2015 (or possibly 2014) where the landlord called the police in response to a suspect break and enter, and where the landlord apparently entered the rental unit, they provided nothing more recently but vague references to the landlord coming into the garage at any time he wants, and no specific dates or times as to when the landlord may have failed to comply with the Act in respect of conducting inspections or entering the rental unit.

Based on the circumstances described by the parties, the landlord's actions in calling the police—given that he thought the tenants were on vacation, and had never met the two people that were in the house—were completely reasonable. This single event, and vague references to other events, does not give rise to a situation whereby the landlord ought to be restricted or suspended in his right to enter the rental unit. I further note that the tenants did not object to, or dispute, the landlord's assertion that the garage is a common area. Indeed, as the landlord pointed out, he does not require permission from the tenants to enter the common areas of the property.

Insofar as the allegations of the landlord ringing the bell, banging on the door, and yelling through the mail slot, the landlord disputes this. And, when two parties to a dispute provide equally reasonable accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above simply their testimony to establish their claim.

In this case, I find that the tenants have failed to provide any additional evidence that the landlord has engaged in this behavior to the extent that they are entitled to an order restricting or suspending the landlord's right to enter the rental unit.

Taking into consideration all the oral testimony presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenants have not met the onus of proving their claim for an order suspending or restricting the landlords' right to enter the rental unit.

The landlords shall, however, continue to comply with section 29 of the Act in respect of any entry into the rental unit.

5. Order Reducing Rent for Service or Facilities Required by Tenancy Agreement and Order for Landlords to Comply with the Act

The tenants testified that the garage door cannot be opened by a keypad that has not worked since 2015. The landlord testified that he has provided the tenants with a remote-control unit. Neither party presented any documentary evidence establishing what is indeed wrong with the garage door. By all accounts, it can, in fact, be opened. And, while the tenants referred to e-mails from the landlord regarding the external keypad, these emails were not submitted into evidence, and I cannot make any finding as to what, if anything, was communicated between the parties.

I call into question why the tenants have taken this long, over 3 years, to address the issue of the garage door; the issue appears to have only gained importance since the issuing of the Notice. And, while I do not doubt that having an inoperable garage door keypad is rather inconvenient, clearly the tenants have been able to access the garage since 2015.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenants have not met the onus of proving their claim for an order requiring the landlords to comply with the Act, nor have they met the onus of proving their claim for a reduction in rent for the garage door.

That having been said, I order that the landlords must, within seven calendar days of receiving this Decision, either (A) ensure that the two tenants named on the tenancy agreement are provided with working remote controls for the garage door, or (B) install a working keypad that will allow the garage door to be opened and closed. Failure to provide working remote controls or installing a working keypad may give rise to further dispute resolution by the tenants and a potential reduction in rent.

6. Compensation for the Filing Fee

Pursuant to section 72(1) of the Act, I award the tenants compensation in the amount of $100.00 for recovery of the filing fee. This amount may be deducted, as a one-time deduction, from future rent for either February 2019 or March 2019.

Conclusion

I hereby order that the Two Month Notice, dated November 21, 2018, is cancelled and of no force or effect. This tenancy will continue until it is ended in accordance with the Act.

~~I hereby order that the tenants may withhold $546.00 from their rent for February 2019 in satisfaction of the "premium charges" charged by the landlord.~~ [Deleted as a result of a Request for Clarification dated January 14, 2019]

I further order that the tenants may withhold $100.00 from their rent for February 2019 or March 2019, in satisfaction of the award granted for recovery of the filing fee.

I hereby order, and authorize, pursuant to section 31(3) of the Act, the tenants to change the locks of the rental unit. This is restricted to the locks of the rental unit and does not include any locks, or door locks, into any common area of the property.

I hereby order that the landlords must, within seven calendar days of receiving this Decision, either (A) ensure that the two tenants named on the tenancy agreement are provided with working remote controls for the garage door, or (B) install a working keypad that will allow the garage door to be opened and closed.

I hereby dismiss the remainder of the tenants' application 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 Act.

Dated: January 9, 2019

Residential Tenancy Branch