



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNC, FFT, LAT, LRE

Introduction:

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the one month Notice to End Tenancy dated April 27, 2019
- b. An order authorizing the Tenant to change the locks
- c. An order suspending or setting conditions on the landlord's right to enter the rental unit or site.
- d. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the one month Notice to End Tenancy was served on the Tenant by posting on April 27, 2019. Further I find that the Application for Dispute Resolution/Notice of Hearing was served by mailing by registered mail to where the landlord carries on business on April 18, 2019. I find that the Amendment to the Dispute Resolution was sufficiently served on the landlord by mailing by registered mail to where the landlord carries on business. With respect to each of the applicant's claims I find as follows:

Issues to be Decided:

The issues to be decided are as follows:

- a. Whether the tenant(s) are entitled to an order cancelling the one month Notice to End Tenancy dated April 27, 2019 and setting the end of tenancy for May 31, 2019?
- b. Whether the tenant(s) are entitled to an order authorizing the Tenant(s) to change the locks
- c. Whether the tenant(s) are entitled to an order suspending or setting conditions on the landlords right to enter the rental unit or site.
- d. Whether the tenant(s) are entitled to recover the cost of the filing fee?

Background and Evidence:

The parties entered into a fixed short term tenancy agreement that provided that the tenancy would start on January 16, 2019, end on April 30, 2019 and become month to month after that. The tenants had experience a flood in their condo and were looking for a place to move to while the repair work was carried out. The tenancy agreement provided that the tenant(s) would pay rent of \$6950 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$3475 at the start of the tenancy. .

The tenants testified that a condition of entering into the tenancy agreement was that the unit would not be listed for sale or shown to prospective purchasers for the duration on their tenancy. He testified the female tenant has health issues and they are very private people. They do not wish to be disturbed. The tenancy agreement was signed on January 11, 2019. As of the date of the hearing they expected they would be able to move back into their place at the end of June 2019 or July 2019.

The tenant produced a text from the agent for the landlord confirming that the landlord agreed that it would not be listed for sale and that the listing would be taken down. The tenant also produced a text dated April 5, 2019 from the agent for the landlord who rented the rental unit to the tenants that states "...It was agreed upon by J that the unit would not be listed for sale during the tenancy nor would there be any showings otherwise they wouldn't have rented the unit..."

The landlord or his representative who were involved with the renting of the unit did not appear at the hearing .

On March 27, 2019 the landlord texted the tenants stating they have had a difficult financial year and requesting that he be permitted to show the rental unit to prospective tenants that might enter into a long term lease. The tenants responded saying they would follow the terms of the tenancy agreement and that they were extending the lease until the end of April. The tenants have subsequently extended the agreement to the end of May.

The tenant provided evidence that contrary to the above agreement the landlord listed the property for sale with a real estate agent at the end of March. The agent for the landlord has attempted to show prospective purchasers the rental unit but the tenants have denied access.

The agent for the landlord who is the listing agent for the sale of the property testified the landlord is in precarious financial position and needs to sell the property. He further testified that the tenant does not have a legal right to restrict access provided the agent for the landlord complies with the Residential Tenancy Act. The landlord relies on the legal rights set out in section 29 of the Act.

Grounds for Termination:

The Notice to End Tenancy relies on the following grounds:

- 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 Details of Cause set out in the Notice provides as follows:

“Landlord's and his /her agent's right to enter to show the property to prospective buyers or tenants when proper notice to tenants was given has been restricted by the tenant. Due to financial reasons the Seller needs to sell the property and the tenant is refusing to give access to prospective buyer(s) and their agents. Request for access with proper notices has been given and then denied entry for the following dates: April 3, 2019 - 3pm , April 10 2019 - 1pm, April 27, 2019 - 3pm.”

Section 10 of the Addendum to the tenancy agreement provides as follows:

“10. **ENTRY BY LANDLORD.** The Tenant agrees to allow the Landlord or Landlord's Agent or contractor entry to the rental unit or the residential property at all reasonable times, upon giving 24 hour written notice (except in emergencies, in which event no advance notice shall be required) to inspect and to perform and facilitate Landlord's obligated repairs, alterations, additions, or improvement. The Tenant also agrees to allow the Landlord or Landlord's Agent to conduct showings of the property to prospective tenants during the last month of the Tenancy for the purpose of re-renting the rental unit or residential property. The Tenant agrees to fully cooperate to all showings occurring at reasonable times with 24-hour notice.”

Analysis:

After carefully considering all of the evidence I determined that the landlord failed to establish sufficient cause to end the tenancy as the landlord failed to prove that the tenants have engaged in illegal activity. The agent for the landlord submitted the illegal activity he was referring to was the breach of section 29 of the Residential Tenancy Act.

Policy Guideline #32 Illegal Activities includes the following:

”The Meaning of Illegal Activity and What Would Constitute an Illegal Activity

The term "illegal activity" would include a serious violation of federal, provincial or municipal law, whether or not it is an offense under the Criminal Code. It may include an act prohibited by any statute or bylaw which is serious enough to have a harmful impact on the landlord, the landlord's property, or other occupants of the residential property.

The party alleging the illegal activity has the burden of proving that the activity was illegal. Thus, the party should be prepared to establish the illegality by providing to the

arbitrator and to the other party, in accordance with the Rules of Procedure, a legible copy of the relevant statute or bylaw.

In considering whether or not the illegal activity is sufficiently serious to warrant terminating the tenancy, consideration would be given to such matters as the extent of interference with the quiet enjoyment of other occupants, extent of damage to the landlord's property, and the jeopardy that would attach to the activity as it affects the landlord or other occupants.

....

I determined landlord failed to prove that the Tenants failure to give the landlord access to show the rental unit does not amount to an illegal activity even if it was contrary to the section 29 of the Residential Tenancy Act and/or an agreement between the parties. .

As a result I ordered that the Notice to End Tenancy dated April 27, 2019 be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged.

The issue that remains is whether the landlord has the right to show the rental property to prospective purchasers provided the landlord complies with section 29 of the Act.

Section 29 of the Residential Tenancy Act includes the following:

Landlord's right to enter rental unit restricted

29 (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

...

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

The agent for the tenants submits there was a separate agreement that provides that the landlord will not list he property and will not show the property to prospective purchasers. Alternatively, the tenant submits that they have the legal right to refuse permission to the

landlord to show the property to prospective purchasers because that would be an “unreasonable” purpose given the representations which the tenants relied on prior to agreeing to rent the rental unit.

The representative of the landlord made the following submissions:

- There was no agreement prior to the start of the tenancy that the landlord would not list the property and would not show the property to prospective purchasers during the term of the tenancy.
- The landlord relies on section 29 of the Act which gives him the legal right to show the property to prospective purchasers.

After carefully considering the evidence I came to the following determinations:

- Prior to entering into the tenancy agreement the landlord (through his agent) agreed with the tenants that the property would not be listed and there would not be showings to prospective buyers during the term of the tenancy.
- The tenants relied on this agreement or representation. They would not have entered into the tenancy agreement if the landlord did not agree.
- I do not accept the evidence of the agent for the landlord that no such agreement was entered into. The agent for the landlord was providing hearsay evidence. I accept the testimony of the tenant these representations took place. The tenant produced copies of text messages from the renting agent confirming this.
- These provisions were not included in the tenancy agreement.
- I determined it was not necessary to consider whether the representations became part of the agreement between the parties and whether such agreement amounts to contracting out the Residential Tenancy Act as I determined that the landlord is bound by the representations of his agent on the basis of the principle of promissory estoppel.
- The Supreme Court of Canada in *Maracle v. Travellers Indemnity Co. of Canada*, [1991] 2 S.C.R. 50 set out the principle of promissory estoppel as follow:

“Issue 1: Promissory Estoppel

The principles of promissory estoppel are well settled. The party relying on the doctrine must establish that the other party has, by words or conduct, made a promise or assurance which was intended to affect their legal relationship and to be acted on. Furthermore, the representee must establish that, in reliance on the representation, he acted on it or in some way changed his position. In *John Burrows Ltd. v. Subsurface Surveys Ltd.*, 1968 CanLII 81 (SCC), [1968] S.C.R. 607, Ritchie J. stated, at p. 615:

It seems clear to me that this type of equitable defence cannot be invoked unless there is some evidence that one of the parties entered into a course of

negotiation which had the effect of leading the other to suppose that the strict rights under the contract would not be enforced, and I think that this implies that there must be evidence from which it can be inferred that the first party intended that the legal relations created by the contract would be altered as a result of the negotiations.”

- I determined that the tenants have established that the landlord (through his agent) made representations that were intended to be relied on when the tenants were told that the landlord would not be listing the property and would not be showing the property to prospective purchasers during the tenancy. The tenants relied on this assurance. I accept their testimony that they would not have rented the rental unit had this assurance not been given. While the landlord had the right to rely on the strict legal rights to show the property provided the landlord complied with section 29 of the Act the landlord is estopped from now acting contrary to this assurance.
- I determined the landlord does not have the right to show the rental unit to prospective purchasers given in the assurances that were made by the landlord that were relied on by the tenant(s) on the basis of the legal principle of promissory estoppel.

Conclusion::

I ordered that the Notice to End Tenancy dated April 27, 2019 be cancelled.

I determined that the landlord does not have the right to show the rental property to prospective purchasers given the assurances given by the landlord that were relied on by the tenants which lead the parties to sign the tenancy agreement. Thus I order the landlord to refrain showing the rental property to prospective purchasers during the term of the tenancy agreement.

I dismissed the tenants' application to an order to change the locks as the tenants failed to provide sufficient evidence to prove that is necessary.

The tenants have for been successful for the most part. I ordered that the landlord pay to the tenants the cost of the filing fee in the sum of \$100 such sum may be deducted from future rent.

This decision is final and binding on the parties.

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: May 28, 2019

Residential Tenancy Branch