



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, LRE, FFT

Introduction

This hearing was set to deal with a tenant's application to cancel a Two Month notice to End Tenancy for Landlord's Use of Property ("2 Month Notice") and orders to suspend or set conditions on the landlord's restricted right to enter the rental unit.

The tenants appeared at the hearing and were affirmed. The landlord did not appear at the hearing despite leaving the teleconference call open at least 20 minutes.

Since the landlord did not appear at the hearing, I explored service of hearing materials upon the landlord.

The tenants testified the hearing materials were served to the landlord via registered mail sent on March 17, 2021 and picked up by the landlord on April 5, 2021. The tenants submitted a registered mail receipt, including tracking number, as proof of service, along with the tracking information from Canada Post. Canada Post recorded the landlord's signature for receipt of the registered mail on April 5, 2021. I was satisfied the landlord was duly served with notification of this proceeding and I continued to hear from the tenants without the landlord present.

Issue(s) to be Decided

1. Should the 2 Month Notice be upheld or cancelled?
2. Is it necessary or appropriate to issue orders suspending or setting conditions on the landlord's restricted right to enter the rental unit?
3. Award of the filing fee.

Background and Evidence

The tenants were served with a Two Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice") dated February 28, 2021 with a stated effective date of April 30, 2021. The tenants filed to dispute the 2 Month notice within the permissible time limit. The tenants called into question the landlord's good faith intention to occupy the rental unit.

The tenants stated the landlord is their mother/mother-in-law. The tenants pointed out that they had a previous dispute resolution proceeding on September 11, 2020 to dispute a One Month Notice to End Tenancy for Cause ("1 Month Notice") and the Arbitrator found the landlord did not substantiate a reason for ending the tenancy for cause (file number provided on the cover page of this decision). The 2 Month Notice is the second Notice to End Tenancy they have received from the landlord, in addition to a family court proceeding, and the landlord has been making claims against them without merit and the landlord appears to be motivated to end the tenancy because of the amount of rent they pay. In addition, the tenants permitted their grandmother (the landlord's mother) to move in with them and the landlord and their grandmother also have their own dispute.

The tenants assert that after the last hearing, where the Arbitrator reviewed the landlord's restricted right to enter the rental unit as provided under section 29 of the Act, the landlord has violated section 29 on at least two occasions: February 25, 2021 and May 28, 2021. The tenants described how the landlord has entered the rental unit on those dates when they are not home but their grandmother was home. Given the on-going dispute between the landlord and their grandmother, the grandmother did not give consent for the landlord to enter. The tenants stated they captured the landlord's entry on video recordings.

The tenants seek the right to change the lock to the rental unit with a new lock that has a keypad so that they can give their grandmother's caregivers access to the rental unit without leaving the rental unit unlocked as they currently do now.

Analysis

Upon consideration of the unopposed submissions of the tenants, I provide the following findings and reasons.

Where a notice to end tenancy comes under dispute, the landlord bears the burden to prove the tenant was served with a valid notice to end tenancy and the tenancy should end for the reason(s) indicated on the notice.

In this case, the landlord did not appear at the hearing or otherwise present any evidence to demonstrate the tenancy should be ended for the reason indicated on the 2 Month Notice. Therefore, I find the landlord failed to meet her burden of proof and I cancel the 2 Month Notice with the effect that the tenancy continues at this time.

Considering this is the second notice to end tenancy the landlord has issued to the tenants in less than a year, and the landlord did not substantiate a basis for ending the tenancy due to cause or landlord's use of property, I caution the landlord that repeatedly issuing notices to end tenancy to a tenant without cause or merit may constitute a breach of the tenant's right of quiet enjoyment. Where a landlord breaches the tenant's right to quiet enjoyment the tenant may make an application seeking further remedy, including a monetary claim against the landlord.

Upon review of the previous dispute resolution decision, I note that the tenants had previously requested that the landlord's right to enter the rental unit be suspended or be conditional. The Arbitrator presiding over that dispute recorded in the decision that the requirements of section 29 of the Act [*Landlord's right to enter rental unit restricted*] enter were reviewed with the parties and the landlord's agent confirmed he understood the landlord's obligations under section 29 and they would comply.

During the hearing before me, the tenants described two circumstances where the landlord has violated section 29 of the Act after the last dispute resolution proceeding by entering the rental unit without consent and without giving notice to enter: on February 25, 2021 and May 28, 2021. I accept their unopposed submissions and I am satisfied there is a significant likelihood the landlord will fail to comply with section 29 again. Therefore, pursuant to section 70(2) of the Act, I authorize the tenants to change the locks to the rental unit and not give the landlord a key or entry code to the new lock. Below, I have reproduced section 70 for the parties' reference:

Director's orders: landlord's right to enter rental unit

70 (1)The director, by order, may suspend or set conditions on a landlord's right to enter a rental unit under section 29 [*landlord's right to enter rental unit restricted*].

(2)If satisfied that a landlord is likely to enter a rental unit other than as authorized under section 29, the director, by order, may

- (a) authorize the tenant to change the locks, keys or other means that allow access to the rental unit, and
- (b) prohibit the landlord from replacing those locks or obtaining keys or by other means obtaining entry into the rental unit

I further prohibit the landlord from changing the locks unless the tenancy has already ended and the tenants have vacated the rental unit; or, the landlord may seek authorization to change the locks by making a Landlord's Application for Dispute Resolution to seek authorization from an Arbitrator.

The tenants are awarded recovery of the \$100.00 filing fee they paid for their application. The tenants are authorized to deduct \$100.00 from rent otherwise payable and in doing so the landlord must consider the rent to be paid in full.

Conclusion

The 2 Month Notice dated February 28, 2021 is cancelled and the tenancy continues at this time.

The tenants are authorized to change the locks to the rental unit and not provide the landlord with a copy of the key or entry code to the new lock. The landlord is prohibited from changing the locks unless the tenancy has already ended and the tenant have vacated the rental unit; or, the landlord may seek authorization from an Arbitrator by making a Landlord's Application for Dispute Resolution.

The landlord is cautioned that repeatedly issuing notices to end tenancy to the tenants without basis or merit may constitute a breach of the tenant's right to quiet enjoyment of the rental unit. Should the landlord breach the tenant's right to quiet enjoyment the tenants may seek further remedy, including monetary compensation from the landlord.

The tenants are awarded recovery of the filing fee and are authorized to deduct \$100.00 from rent otherwise payable and in doing so the landlord must consider the rent to be paid in full.

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: June 18, 2021

Residential Tenancy Branch