



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC
 OPL, FFL

Introduction

This hearing was convened by way of conference call concerning applications made by the tenant and by the landlord. The tenant has applied for an order cancelling a notice to end the tenancy for landlord's use of property and for an order that the landlord comply with the *Residential Tenancy Act*, regulation or tenancy agreement. The landlord has applied for an Order of Possession for landlord's use of property and to recover the filing fee from the tenant for the cost of the application.

The parties both attended the hearing and gave affirmed testimony. The tenant was also accompanied by a Social Worker who gave submissions at the end of the hearing. The parties were given the opportunity to question each other.

The parties have exchanged evidence, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established that the Two Month Notice to End Tenancy for Landlord's Use of Property was issued in accordance with the *Residential Tenancy Act* and in good faith, or should it be cancelled?
- Has the tenant established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement with respect to elimination of pests in the rental home?

Background and Evidence

The landlord testified that this fixed-term tenancy began on March 1, 2021 and reverted to a month-to-month tenancy after May 31, 2021, and the tenant still resides in

the rental unit. Rent in the amount of \$500.00 is payable on the 1st day of each month, and the tenant is currently in arrears the sum of \$5.00. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$250.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a room in the landlord's house. The landlord testified that 6 or 7 rooms are rented, and all tenants share kitchen and bathroom with other tenants, but not with the landlord, who also resides in the home.

The landlord further testified that the home is slowly being renovated which is why most tenancy agreements are month-to-month or short fixed-terms. The landlord's room is in the basement, is small and there's a door going to the tenant's room. The landlord wants to take down the wall between the 2 rooms and use the rental space for the landlord's personal use.

On May 20, 2022 the tenant was served with a Two Month Notice to End Tenancy for Landlord's Use of Property (the Notice) and a copy has been provided for this hearing. It is dated May 20, 2022 and contains an effective date of vacancy of July 20, 2022. The reason for issuing it states: The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse), specifying the landlord or the landlord's spouse. It was served by the landlord's daughter-in-law and a Proof of Service document has also been provided for this hearing. It indicates that the Notice was served by posting it to the door of the rental unit with a witness present on May 20, 2022. However, the Proof of Service document also states that the landlord confirms that the landlord served the Notice in that manner.

On May 9, 2022 the landlord went on vacation, and the tenant texted the landlord stating that she was going to move out and requested return of May's rent and the security deposit. The tenant had an issue with another tenant. The night before the landlord left, the landlord asked the tenant if she had cleaned the room and inspected; and it was fine, but didn't inspect for nor did the landlord see any bugs.

The landlord has also provided a copy of a text message dated March 21, 2022 to all tenants indicating that the landlord will inspect all rooms every last Sunday afternoon of the month starting on March 27. Also provided is a Narrative made by the landlord indicating that while the landlord was away on vacation other tenants complained that they cannot use the living room because the tenant had been sleeping there, and the landlord was constantly annoyed by reports of her behaviour.

The tenant testified that a Narrative has been provided for this hearing, related to pest control, maintenance and costs.

The tenant demanded recovery of May's rent, which the landlord complied, but the tenant didn't accept it. The tenant gave the landlord a letter on May 9, 2022 respecting pest control, and another tenant upstairs also had a pest issue that the landlord didn't address, and the tenant viewed the Notice as retaliation. The letter seeks the landlord's attention about bedbugs. The tenant followed up with a text message the same day stating that the pest control company needs the landlord's permission to complete an inspection, and the tenant was willing to share the cost. The tenant again texted the landlord on May 13, 2022, with no action by the landlord. Photographs of bugs and bites on the tenant's body have also been provided for this hearing. The tenant saw a physician on June 2, 2022 and a letter from the physician, also provided for this hearing, states that the tenant was diagnosed with possible bed bug bites.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, and in the case of a notice to end the tenancy for the landlord's use of the rental unit, the landlord must demonstrate good faith intent to accomplish the stated purpose for ending the tenancy.

I have reviewed all of the evidentiary material, including the landlord's Narrative, which states that the landlord is annoyed by the tenant complaining about bed bugs, and annoyed by other tenants complaining about the tenant. The tenant's testimony that the Notice was given in retaliation is believable, considering that the Notice to end the tenancy was given very close to the time that the tenant made the complaints.

I am not satisfied in the circumstances that the landlord has demonstrated good faith intent to accomplish the stated purpose for ending the tenancy, and I dismiss the landlord's application in its entirety. The Two Month Notice to End Tenancy for Landlord's Use of Property is cancelled.

The tenant's application also seeks an order that the landlord comply with the *Act*, regulation or tenancy agreement. Considering the physician's letter and photographs provided by the tenant, I order the landlord to retain the services of a professional pest control company to investigate and treat the rental home. I further order that such professionals be retained by no later than October 24, 2022.

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed in its entirety without leave to reapply.

The Two Month Notice to End Tenancy for Landlord's Use of Property is hereby cancelled and the tenancy continues.

I order the landlord to retain the services of a professional pest control company by no later than October 24, 2022 to inspect and treat the rental home.

This order is final and binding and may be enforced.

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 14, 2022

Residential Tenancy Branch