



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNR-MT, CNC-MT, CNL, CNL-4M, OLC, FFT, MNRT, MNDCT, RR, DRI-ARI-C, RP, LRE, AS

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- more time to make an application to cancel the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 66;
- more time to make an application to cancel the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 66;
- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- in a different way than required by the *Act* pursuant to section 71;
- an order regarding a disputed additional rent increase pursuant to section 43;
- a determination regarding their dispute of an additional rent increase by the landlord pursuant to section 43; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Preliminary Issue – Severance

Residential Tenancy Branch (RTB) Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claims regarding the One Month Notice and the Two Month Notice and the continuation of this tenancy are not sufficiently related to any of the tenant's other claims to warrant that they be heard together. The parties were given a priority hearing date in order to address the question of the validity of the Notices to End Tenancy.

The tenant's other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the Notices to End Tenancy. The tenant also advised that he erroneously checked off the box to dispute a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, even though there isn't one. I exercise my discretion to dismiss all of the tenant's claims with leave to reapply except cancellation of the One Month and Two Month notices to end tenancy and recovery of the filing fee for this application.

Issue(s) to be Decided

Should the One Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Should the Two Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Is the tenant entitled to the recovery of the filing fee?

Background and Evidence

LC testified that on May 30, 2023 he issued a Two Month Notice to End Tenancy for Landlords Use of Property to the tenant as he intended to move in with his nephew. LC testified that on August 2, 2023 he issued a One Month Notice to End Tenancy for Cause for the following reasons:

47 (1)A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(c)there are an unreasonable number of occupants in a rental unit;

(d)the tenant or a person permitted on the residential property by the tenant has

(i)significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,

(ii)seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or

(iii)put the landlord's property at significant risk;

(e)the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

(i)has caused or is likely to cause damage to the landlord's property,

(ii)has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or

(iii)has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

(f)the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;

(h)the tenant

(i)has failed to comply with a material term, and

(ii)has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

(i)the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34 *[assignment and subletting]*;

LC testified that the tenant has sublet the property to at least 15 trailers which has now compromised and polluted the soil on this property which is designated as farmland. LC testified that the tenant has not grown any fruits or vegetables on the property resulting

in the property losing its farmland status causing a significant increase in property taxes to the landlord. The landlord requests that this tenancy ends.

The tenant gave the following testimony. EA testified that the landlord only issued the Two Month Notice after he refused to pay double the rent. The tenant states that he has a verbal agreement that there are four years remaining on his five year lease. The tenant testified that the trailers are farmworkers that live and work on the property and that half of the property is rented to another farming company. The tenant testified that he wants to work with the landlord and continue living there.

Analysis

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

When a landlord issues a notice under section 47 or 49, they bear the burden of providing sufficient evidence to support the issuance of the notice. The landlord did not submit any documentation for this hearing.

Firstly, I address the One Month Notice to End Tenancy for Cause. The landlord made allegations of illegal activity on the property and that the tenant has caused damage and put the property at risk. The tenant adamantly denies and disputes these allegations. In the absence of any supporting corroborating documentary evidence, I find that the landlord has not provided sufficient evidence to support the issuance of the notice, accordingly; the One Month Notice to End Tenancy for Cause is cancelled, it is of no effect or force.

I now address the Two Month Notice to End Tenancy for Landlords Use of Property as follows. The tenant has called into question whether the landlord has issued the notice in good faith. Residential Tenancy Policy Guideline 2 addresses the “good faith requirement” as follows.

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.

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 to End the Tenancy. This might be documented through:

a Notice to End Tenancy at another rental unit;

an agreement for sale and the purchaser's written request for the seller to issue a Notice to End Tenancy; or

a local government document allowing a change to the rental unit(e.g., building permit) and a contract for the work.

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 that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold 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 to End Tenancy. The landlord must also 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.

The landlord testified that he was going to move into the property but was very limited in his information. The tenant argues that approximately ten days after being issued the notice, the landlords realtor tried negotiating a higher rental rate. The landlord stated that the tenant initiated the negotiating, however I find this runs contrary to the landlords claim that he wanted to move into the home.

In addition, the landlord stated that he was going to do some work on the home and that it is not suitable to live in and that he may sell the property as well. I find that the landlord was unclear about his intentions and that his testimony varied from the beginning of the hearing compared to the end. Based on all of the above and on a balance of probabilities, the landlord has not provided sufficient evidence to satisfy me that the notice was issued in good faith; accordingly, this notice is cancelled, it is of no effect or force.

As the majority of the tenant's application was dismissed with leave to reapply, I find that the tenant is not entitled to the recovery of the filing fee and must bear that cost; accordingly, that portion of the application is dismissed without leave to reapply.

Conclusion

The One Month Notice dated August 2, 2023 and the Two Month Notice dated May 30, 2023 are cancelled. The tenancy continues.

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 12, 2023

Residential Tenancy Branch