



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNL

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a Two Month Notice to End Tenancy for the landlords' use of the property.

The tenant served the landlord by registered mail on September 22, 2010 with a copy of the Application and Notice of Hearing. I find that the landlord was properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties appeared; the tenant was accompanied by her advocate and the landlords called a witness. All parties gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Is the tenant entitled to cancel the Notice to End Tenancy?

Background and Evidence

Both parties agree that this month to month tenancy started on or about March 28, 2010. The tenant pays a monthly rent of \$395.00 which is due on the last day of each month. The tenant paid a security deposit of \$197.50 on March 24, 2010. The tenant rents a room in this three bed room unit and has shared use of the common areas of the unit.

The tenant was given a Two Month Notice to End Tenancy on September 12, 2010 with a date to vacate given as November 30, 2010. This was posted to the tenants' door and is deemed to have been received by the tenant on September 15, 2010. The tenant applied to dispute this

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Notice on September 21, 2010. The reasons given on the Notice to End the Tenancy are that the rental unit will be occupied by the landlord or the landlords spouse or a close family member of the landlord or the landlords spouse.

The landlord testifies that her and her husband and young child wish to move back into the rental unit. The landlord states they moved from the unit about 14 months ago after their daughter was born and went to live with her parents in their two bedroom unit. As her daughter is now 14 months old they have decided they need more space and want to move back to their own home.

The landlord testifies that she has recently started a new job at the local hospital close to the rental unit. she claims this is another reason for their decision to move back to their home as it is close to the hospital and therefore will reduce her traveling time to get to and from work and will also enable her to be readily available for more hours at work.

The landlord states they own another rental unit in the same location but this has a lease remaining on it until next year and they are not able to return to live in that unit. The landlord testifies that in the tenants unit one of the other tenants moved out in October and the third tenant has signed a mutual agreement to end the tenancy on November 30, 2010. The landlord states they then decided to give this tenant a Two Month Notice to End Tenancy as the whole unit will then be available for their use at the end of November, 2010.

The tenant disputes the Two Month Notice she states that she believes the reasons given by the landlord are untrue and the Notice has not been issued in good faith. The tenant testifies that the landlord has attempted to evict her on two separate occasions and at those hearings the landlord was not successful in obtaining an Order of Possession. The tenant feels the landlord is not acting in a truthful manner and she feels her intentions to live in the home are false and she just wants to evict her.

The tenant testifies that the landlords claim to be living in the downtown area but she states she obtained information from the landlord registry which shows their address being at their other

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rental unit in the same street as her rental unit. Therefore, the tenant questions the landlords' reasons of wanting to move to be closer to her work place and questions the landlords testimony that they live in the downtown area of the city. The tenant states she went to this property and was told by one of the tenants living there that the landlord lived at that address. She claims the landlords cars were also parked at this address.

The tenant also questions the landlord's intent in wanting to move back to the rental unit for the additional space for their child. The tenant states the rental unit is small with only one closet, three small bedrooms and there is no play area for a small child.

The landlord testifies that they do not live in their other rental unit; the whole property is rented out to a tenant who sublets to her friends. The landlord also states her stepson lives in the basement unit of that house and they have parking rights at the property and park some of their cars there as there is limited parking in their downtown accommodation.

The landlords witness gave testimony. The landlords witness is the tenant of her other rental unit in the same street. This witness testifies that she has a tenancy agreement with the landlord for a fixed term tenancy which ends on March 31, 2011. The witness testifies that there are four tenants living in the house and the landlords' son lives in the basement. She states she has never heard a baby in the house. The landlord has provided a copy of this tenants' driving licence which shows she lives at that address and a copy of the tenancy agreement. These documents were not given to the tenant in evidence. However, as the driving licence is a legal document I will accept it in evidence.

The landlord seeks an Order of Possession.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both Parties and witness. The tenant argues that the landlord has issued this Two Month Notice as another attempt to evict her and that the landlord has no intention of moving back to the rental

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unit. In this matter the tenant has the burden of proof and must show that the landlord will not be using the property for the reason given on the Notice. When a tenant's evidence is contradicted by the landlord, the tenant will need to provide additional corroborating evidence to satisfy the burden of proof. I find the tenant has not provided sufficient evidence to indicate that the landlord will not be using the property for its intended purpose as stated on the Notice to End Tenancy and has therefore not met the burden of proof in this matter.

Consequently, I find that the landlords' Two Month Notice to End Tenancy under section 49 of the Act is upheld and the landlord is entitled to an Order of Possession as requested pursuant to section 55 of the Act.

However I would direct both parties to the *Residential Tenancy Act* section 51 which states:

Tenant's compensation: section 49 notice

51 (1) *A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.*

(1.1) *A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.*

(1.2) *If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.*

(2) *In addition to the amount payable under subsection (1), if*

(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or



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(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

Conclusion

The Tenant's application is dismissed without leave to reapply. The Two Month Notice to End Tenancy for the landlords' use of the property will remain in force and effect.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective on November 30, 2010. This order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that Court.

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 27, 2010.

Dispute Resolution Officer