



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNL, FF

Introduction

This matter dealt with an application by the tenant to cancel a Two Month Notice to End Tenancy for landlords' use of the property and to recover the filing fee for this application.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and were given in person to the landlord on October 29, 2010.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party and witness, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

Is the tenant entitled to cancel the Two Month Notice to End Tenancy?

Background and Evidence

Both parties agree that this month to month tenancy started on July 23, 2009. There was a verbal agreement in place. Rent was \$1,300.00 per month and was due on the first of each month.

The landlord testifies that she served the tenant with a two Month Notice to End Tenancy on October 27, 2010 by posting this in the tenants' mail slot. This Notice gave an effective date for the tenant to vacate the rental unit as of January 01, 2011. The reason given on this Notice is

Residential Tenancy Branch
Ministry of Housing and Social Development

that the landlord or the landlords spouse or a close family member of the landlord or the landlords spouse intends to occupy the rental unit.

The landlord states her daughter was having financially difficulties as she has had her hours cut at work. The landlord testifies that she asked a realtor to do a drive by on the rental house to assess the current rent potential so if she could increase the rent she would be able to help her daughter out financially. She claims the realtor told her she could charge significantly more rent for the property. She asked the tenant if she would agree to a rent increase but the tenant refused. The landlord and her daughter assessed the situation and decided that her daughter and son-in-law could rent out their townhouse and move into the rental unit as it will be less of a financially burden to them, they hope to also take in two foreign students to occupy the two spare bedrooms. The landlord states she does not intend to charge her daughter rent and they can earn \$700.00 to \$800.00 dollars a month by taking in foreign students. This money would be used to help them pay the mortgage on their own townhouse in the event they are unable to rent it due to Strata rules. The landlord states her daughters financially wellbeing is her motive in asking the tenant to end her tenancy because she would not agree to increase the rent.

The landlord has provided a letter from a prospective tenant who says he has the intent to rent the landlords daughters and son- in-laws townhouse commencing January 08, 2011.

The tenant states she believes the landlord was motivated to give her this Two Month Notice in retaliation because she refused to pay a \$700.00 rent increase and applied for Dispute Resolution concerning the repairs. The tenant testifies that she believes the landlord has not acted in good faith in issuing this Two Month Notice to End Tenancy. The tenant testifies that the landlord did ask her to pay an additional \$700.00 per month in rent but at that time she gave her a different reason for increasing the rent and did not mention her daughters' difficulties. The tenant states she told the landlord she must follow the *Act* and give her a legal rent increase on the required form and she would be happy to pay the allowable rent increase for 2010. The tenant states that at this point the relationship between her and the landlord broke down and became uncivil.



Dispute Resolution Services

Page: 3

Residential Tenancy Branch
Ministry of Housing and Social Development

The tenant testifies that the landlord refused to make any repairs to the property and the tenant filed an application for repairs to be made. At that hearing the landlord was ordered to carry out repairs however the tenant claims the landlord has not complied with any of the Orders issued from that hearing and suggests that this is also motivation to end the tenancy so she does not have to comply with the Orders issued in October, 2010.

The tenant testifies that the landlords' daughters' townhouse is a Strata property and is governed by Strata rules concerning renting to a tenant. The tenant suggests the landlords' daughter would not be able to rent her townhouse to the person, who wrote in concerning his intent to rent it for January, 2011 and she states the landlord has provided no evidence to show that her daughter has asked her Strata to change the rules due to her hardship.

The tenant states that if the landlord was planning back in July, 2010 for her daughter to move into the rental property then why did she ask her to increase her rent, offer her three months free rent to move out or get a realtor to come to view the property. The tenant states the Two Month Notice was put through her mail slot the night before the previous hearing. The tenant testifies that the landlord has two other empty properties her daughter could move into and questions the landlord as to her intent to evict her when these properties are empty. The tenant states she feels the Notice is unfair and unwarranted. She seeks to have the Notice cancelled and for her tenancy to continue.

The landlord testifies that of the properties referred to by the tenant; one is in an area away from her daughter and son-in-laws place of work and is in the process of being demolished and the other property is a Strata property and cannot be rented out as only the owner can live there.

The tenants witness gave testimony concerning the landlords' contractor who came to the house to look at the furnace, stove and fire places. This witness testifies that the contractor did not do any work while she was there with him and has not been back to the house since the Orders issued at the previous hearing were served to the landlord.



Dispute Resolution Services

Page: 4

Residential Tenancy Branch
Ministry of Housing and Social Development

The landlord declines to cross examine this witness. The landlord states she is happy to extend the effective date of the Notice to February 28, 2011

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties and witness. I refer both Parties to Section 2 of the Residential Tenancy Policy Guidelines. When the 'good faith' of the landlord in issuing this two Month Notice is called into question this section states:

The "good faith" requirement imposes a two part test. First, the landlord must truly intend to use the premises for the purposes stated on the notice to end the tenancy. Second, the landlord must not have a dishonest or ulterior motive as the primary motive for seeking to have the tenant vacate the residential premises.

For example, the landlord may intend to occupy or convert the premises as stated on the notice to end. That intention may, however, be motivated by dishonest or undisclosed purposes. If the primary motive for the landlord ending the tenancy is to retaliate against the tenant, then the landlord does not have a "good faith" intent. Similarly, if the landlord is attempting to avoid her legal responsibilities as a landlord, or is attempting to obtain an unconscionable or undue advantage by ending the tenancy, the intent of the landlord may not be a "good faith" intent. Rather, the circumstances may be such that dishonesty may be inferred.

If the "good faith" intent of the landlord is called into question, the burden is on the landlord to establish that she truly intends to do what the landlord indicates on the Notice to End, and that she is not acting dishonestly or with an ulterior motive for ending the tenancy as the landlord's primary motive.

While I accept that the landlords' daughter and son-in-law may wish to occupy the rental unit I find this is not the true intention of the landlord in issuing the Two Month Notice. It is my decision that the landlord has not established that she does not have an ulterior motive as her



Dispute Resolution Services

Page: 5

Residential Tenancy Branch
Ministry of Housing and Social Development

primary motive in ending this tenancy in retaliation against the tenant for not agreeing to increase the rent by \$700.00 per month. I also find that the landlord has avoided her legal responsibilities as a landlord with regard to repairing and maintaining the rental unit and has not complied with Orders issued at a previous hearing held in October, 2010. Consequently, the tenants' application to cancel the Two Month Notice to End Tenancy is upheld.

Conclusion

The tenant's application is allowed. The Two Month Notice to End Tenancy for landlords use of the property dated October 27, 2010 is cancelled and the tenancy will continue. As the tenant has been successful in setting aside the Notice, she is entitled to recover her \$50.00 filing fee for this proceeding and may deduct that amount from her next rent payment when it is due and payable to the landlord.

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: November 24, 2010.

Dispute Resolution Officer