



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNL, MNDC, OLC, RP, RR, FF

Introduction

This matter dealt with an application by the Tenant to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property dated October 27, 2010 and to recover the filing fee for this proceeding.

The Tenant also applied for an Order that the Landlord make repairs, that the Landlord comply with the Act, for compensation for damage or loss under the Act, for a rent reduction as a result of repairs not made or services and facilities not provided and to recover the filing fee for this proceeding. However, RTB Rule of Procedure 2.3 states that "if in the course of the dispute resolution proceeding, the Dispute Resolution Officer determines that it is appropriate to do so, the Dispute Resolution Officer may dismiss unrelated disputes contained in a single application with or without leave to reapply." I find that the other remedies sought by the Tenant are unrelated to her application to cancel a 2 Month Notice and as a result, they are dismissed with leave to reapply.

Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?

Background and Evidence

This fixed term tenancy started on December 1, 2009 and expires on November 30, 2010 with an option to continue on a month to month or further fixed term basis. Rent is \$1,600.00 per month payable in advance on the 1st day of each month.

The owner's agents said that they received instructions from the owner of the rental property on or about September 24, 2010 that he wished to end the tenancy at the end of the fixed term. As a result, the Landlord's agents sent the Tenant a letter to that effect however, the Tenant advised them that she did not have to vacate the rental unit at that time under the terms of the tenancy agreement. Consequently, on October 27, the owner's agents served the Tenant with a 2 Month Notice to End Tenancy for Landlord's Use of Property dated October 27, 2010 by putting it through the mail slot. The ground indicated on the Notice was that "the rental unit will be occupied by the

landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse."

The Landlord's agents admitted that the Landlord did not intend to use the rental unit as his primary residence (which is in another community), however they said he did intend to occupy it approximately one week per month because he had a work contract in the same community and needed a place to stay. The owner's agents said the owner no longer intended to use the house as a rental property and claimed he had no present intention of selling it.

The Tenant argued that the Landlords were not ending the tenancy in good faith. In particular, the Tenant said she was advised by the owner's agents that the owner had viewed the rental property in August 2010 and was upset at seeing long grass, weeds and dead or dying trees and implied that he wanted to sell the property because it was not being looked after. The Tenant said the trees were in that condition at the beginning of the tenancy and that she only allowed the grass to grow to conserve water. In any event, the Tenant said it was not long thereafter that she received a letter from the owner's agents advising her that the owner wanted to end the tenancy at the end of the fixed term. A few days later (on September 27, 2010) the Tenant said she received a call from the owner's agents saying that a realtor wanted to view the property with a potential purchaser. The Tenant said the potential purchasers advised her that they had been interested in purchasing the property 2 years earlier (when it had been listed) but the price was too high.

The Tenant said she sent the owner's agents a letter on October 6, 2010 advising them that she would not accept their letter of September 24, 2010 as an enforceable notice to end the tenancy. The Tenant claimed that she then received the 2 Month Notice from the owner's agents claiming that the owner or a close family member intended to occupy the rental unit. Consequently, the Tenant argued that the Landlords were using whatever excuse was handy at the time to end the tenancy.

Analysis

RTB Policy Guideline #2 (Ending a Tenancy: Good Faith Requirement) says at p. 2 as follows:

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



Dispute Resolution Services

Page: 3

Residential Tenancy Branch
Ministry of Housing and Social Development

The Tenant argued that the Landlord's primary motive was to end the tenancy because he was initially upset with the condition it was in and mistakenly thought the Tenant was responsible for that. The Tenant also said she believes the Landlord now intends to sell the rental property. The owner's agents admit that the Landlord may wish to sell the rental property at some point in the future but deny that it is his present intention. The owner's agents claimed that the viewing of the property by a realtor on September 27, 2010 was at the request of former prospective purchasers who are no longer interested. The owner's agents claim that the owner intends to occupy the rental property when he is in the community working.

I find on a balance of probabilities that the owner of the rental property intends to occupy the rental unit while he is in the community working and does not intend to re-rent it again or to sell it within the 6 month period following the effective date of the Notice. Consequently, the Tenant's application to cancel the Notice is dismissed without leave to reapply and the 2 Month Notice dated October 27, 2010 will remain in effect.

Conclusion

The Tenant's application to cancel the 2 Month Notice dated October 27, 2010 and to recover the filing fee for this proceeding is dismissed without leave to reapply. The Tenant's application for an Order that the Landlord make repairs, that the Landlord comply with the Act, for compensation for damage or loss under the Act and for a rent reduction are dismissed with leave to reapply.

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 10, 2010.

Dispute Resolution Officer