



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: OPL

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on the landlord's Two-Month Notice to End the Tenancy for Landlord's Use dated August 31, 2013, purporting to be effective October 31, 2013.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the testimony and relevant evidence that was properly served.

Preliminary Issue Request to Extend Time Limit to Dispute the Notice

The tenant has requested that the time limit to dispute the Notice be extended.

Section 49 (2) of the Act provides that a landlord may end a tenancy with 2 month's notice for landlord's use provided that the landlord has obtained all of the necessary permits and approvals required by law, and intends in good faith, to convert the rental unit for use by a caretaker, manager or superintendent of the residential property. Section 49(8) of the Act provides that a tenant may dispute the notice by making an application for dispute resolution within 15 days after the date the tenant receives the Notice.

In this instance I find that the tenant received the Notice on January 31, 2013 and that the fifteen-day period would have expired on or before Saturday February 16, 2013. The tenant's application was submitted on Wednesday February 20, 2013.

The tenant based his request to extend the 15-day deadline to dispute the Two Month Notice to End Tenancy for Landlord's Use on the fact that that he was under a doctor's care for medical ailments during the period after being served with the Two Month Notice to End Tenancy for Landlord's Use. The tenant submitted medical records in support of his request for an extension of time.

Section 66(1) of the Act does permit an arbitrator to extend the deadline in exceptional circumstances, such as a medical disability. I accept the tenant's evidence that his ability to apply within the 15-day deadline was affected by his medical conditions. Accordingly, I grant the tenant the extension he seeks for making the application.

Issue(s) to be Decided

Should the Two Month Notice to End Tenancy be cancelled as requested by the tenant?

Background and Evidence

The tenancy began in August 2006 and rent is \$375.00. A security deposit of \$187.50 was paid. The tenant submitted into evidence a copy of the Two-Month Notice to End Tenancy indicating that:

"The landlord intends to convert the rental unit for use by a caretaker, manager or superintendant of the residential property."

The landlord testified that they decided to hire an on-site manager in the complex and therefore require the tenant to vacate his suite for this purpose. The landlord submitted a copy of a contract between the landlord and an individual apparently being hired as "Resident Caretaker" for the complex, dated January 25, 2013. When the landlord was asked why the tenant's rental unit was chosen to be converted for the new caretaker, the landlord testified that the tenant's unit was considered to be the most appropriate one to house the new caretaker.

The landlord submitted into evidence a copy of email communication making a reference to a list of "outstanding issues". The email, dated January 18, 2013 from a person reportedly employed by the municipality, states that:

"With respect to the basement, we support your decision to have someone on site to manage the building"

The tenant raised the issue of bad faith and stated that his unit was purposely chosen in order to deprive him of his home. The tenant pointed out that there was an existing vacant unit in the same building that had been sitting empty from August 2012 until March 2013. The tenant's position is that the landlord could have utilized this vacant unit instead of choosing to terminate his tenancy. According to the tenant, he has been subjected to repeated efforts by the landlord to terminate his tenancy in the past and the Two Month Notice to End Tenancy for Landlord's Use was the latest example of the landlord's persistent attempts to unfairly evict him. The tenant pointed out that all of the past Notices issued by the landlord have been rejected by the arbitrators at previous hearings. The tenant testified that, because of the landlord's vexatious Notices, the tenant has been forced to spend time and endure the stress of having to continually

defend against being evicted. The tenant testified that he feels that he has been subjected to persecution and harassment by the landlord and others. The tenant stated that this has contributed to the health problems he has suffered.

The tenant testified that the information given by the landlord in support of the current Two Month Notice to End Tenancy for Landlord's Use is inaccurate. The tenant's position is that the Notice is completely without merit and he is requesting that the Notice be cancelled.

Analysis

The burden of proof is on the party seeking to terminate the tenancy.

Under section 49(6)(e) of the Act under, "*Landlord's notice: landlord's use of property*", the Residential Tenancy Act states that a landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith to convert the rental unit for use by a caretaker, manager or superintendant of the residential property.

The tenant is alleging bad faith on the part of the landlord and feels that the Two Month Notice to End Tenancy for Landlord's Use should be cancelled. When the issue of bad faith has been raised, the onus shifts to the landlord to prove that the termination of the tenancy is a good faith intention to utilize the unit for the stated purpose, and not to unfairly end a tenancy.

I find that, in order to refute the tenant's allegation of bad faith, the landlord should be prepared to furnish some evidence to support that this Notice was issued in good faith.

Although the landlord has testified that the tenant's unit is the ideal location for the caretaker to reside, I find that the landlord did not provide compelling evidence to show why this was the case. I find that the tenant's argument that there was little to distinguish his suite from other adjacent suites to have some possible merit. I also accept the tenant's testimony that the landlord had months to contemplate using a vacant unit to accommodate the hiring of a caretaker. It appears that the landlord recently rented the vacant unit to a new renter around the same time that the landlord served the Two Month Notice to End Tenancy for Landlord's Use.

For this reason I do not accept the landlord's argument that they have no choice but to terminate this tenancy in order to use the tenant's unit. I find that, on a balance of probabilities, it is likely that there are other choices of location for the caretaker.

I find the testimony given by the tenant with respect to previous unsuccessful attempts by this landlord to terminate his tenancy to be accurate based on decisions for prior hearings that are on record.

Given the above and the evidence before me, I find that the landlord has not sufficiently met the burden of proof to justify the Two Month Notice to End Tenancy for Landlord's Use. Therefore, I find that the Notice dated January 30, 2013 must be cancelled.

I hereby order that the Two-Month Notice To End Tenancy for Landlord's Use dated January 30, 2013 is permanently cancelled and of no force nor effect.

Conclusion

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: March 18, 2013

Residential Tenancy Branch