



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNL, FF

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the tenant for an order to cancel a Two-Month Notice to End Tenancy for Landlord's Use dated June 13, 2013, and purporting to be effective August 15, 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 affirmed testimony and relevant evidence that was properly served.

Issue(s) to be Decided

- Should the Two-Month Notice to End Tenancy for Landlord's Use be cancelled?

Background and Evidence

The tenancy began approximately 30 years ago and the current rent is \$330.00. A security deposit of \$150.00 was paid. The landlord testified that they recently purchased the property.

The tenant testified that the landlord made a previous attempt to terminate the tenancy for landlord use, by serving a Two Month Notice to End Tenancy for Landlord's Use, dated May 14, 2013, alleging that the unit was needed by the landlord as a close family member would be moving into the unit.

The tenant testified that, during the hearing on June 12, 2013, to deal with the tenant's application to cancel the 2-month Notice, it was established that the landlord's true intention was to utilize the property to house farm workers. The tenant testified that the May 14, 2013 Notice was cancelled by the arbitrator in a decision dated June 12, 2013.

The tenant testified that, on June 13, 2013, the day after the prior hearing, before the parties had even found out what the decision was, the landlord approached the tenant, asking to view the home. After their conversation, which, according to the tenant, was

friendly and supportive of the tenancy, the landlord suddenly gave the tenant an envelope. The tenant testified that he was shocked to find that the landlord had served him with a second Two Month Notice to End Tenancy for Landlord's Use, citing exactly the same reason as the previous Notice, which alleged that the landlord needed the residence for use by a close family member.

The tenant has raised the issue of bad faith with regard to this most recent notice. The tenant pointed out that the landlord's true motive appears to be a financial one, as evidenced by a sentence in the landlord's submission that states, "*Since we are not getting enough rent for that house*"

The tenant testified that the landlord betrayed his trust and has already been caught giving misleading information. The tenant seeks to have this second Two-Month Notice cancelled.

The landlord testified that, while they did originally intend to use the rental unit for farm workers, this is no longer the case. The landlord did not explain why they had chosen to issue the first Two Month Notice to End Tenancy for Landlord's Use based on a claim that they required the home for use of a close family member.

The landlord emphasized that there are no longer any plans to house farm labourers in the unit. The landlord testified that they have made other arrangements and all of the farm workers have now been housed elsewhere.

The landlord testified that they truly do want the tenant to vacate the home because an elderly parent, needs to live there. The landlord pointed out that the home is located within a 2 minute drive from their family home. The landlord said that their current household is crowded and this new space is urgently needed for the family member.

The landlord complained that it is very difficult to prove good faith. The Landlord stated that their elderly parent does not speak English and therefore was not able to attend as a witness, nor is there any form of documentation that could function to verify the landlord's intention to move their parent into the house. Nonetheless, the landlord was adamant that their parent would be moving into the home without delay.

The tenant pointed out that the home is not in a condition that would be suitable for an elderly person to live in on their own, as the premises require significant repairs and updating. The tenant testified that a lot of maintenance is involved that would not be possible for an elderly person to cope with.

The landlord argued that they are prepared to do whatever repairs were necessary after their relative had moved in.

When asked whether the landlord had ever contemplated doing some of this renovation work while the current tenant was still in residence, the landlord stated that they could not do repairs and renovations with the tenant still living in the unit. The landlord stated that they just want to clear everything out to get it ready for their mother to move in.

According to the landlord, all of the needed renovations can be done while their mother is living on site.

The tenant pointed out that this statement contradicted the landlord's previous testimony alleging that the repairs or renovations could not be done while the tenant was still residing in the unit.

The tenant testified that he is skeptical of the landlord's claim of good faith, because the day before the landlord served this latest Two Month Notice to End Tenancy for Landlord's Use, the landlord's affirmed testimony at the hearing was that their intended use for the home was to lodge farm workers.

The tenant observed that the landlord's drastic change of direction, only one day later, raised suspicions and made him doubt the landlord's good faith intention.

Analysis Two Month Notice to End Tenancy for Landlord's Use

Section 49(5) provides that a landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in **good faith** to occupy the rental unit. (my emphasis).

However the tenant has raised the issue questioning the landlord's good faith intentions and indicated that the landlord has an ulterior motive for issuing the Two-Month Notice to End Tenancy.

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. If the primary motive for the landlord ending the tenancy is to retaliate against the tenant or use this section to resolve problems with the tenancy, or make a financial gain, then the landlord does not have a, "*good faith*" intent.

The burden is on the landlord to establish the landlord's good faith intent and I find that the landlord failed to explain the inconsistencies in their position. I find that, if the landlord is prepared to do renovations with the tenant's relative living on site, then there would be no valid justification for the landlord's claim that they could not commence some of the same improvements without requiring the tenant to vacate first.

I accept the tenant's testimony that the landlord's sudden change of plans for the unit, that apparently occurred only one day after the landlord testified under oath that they intended to use the home to house farm workers, does serve to raise some questions, given the timing.

I also find that the fact the landlord had previously issued a Two Month Notice to End Tenancy for Landlord's Use, for the falsely claimed purpose that a close relative needed the unit, only to later admit during the hearing that their true intention was to house farm workers, is not a positive reflection on the landlord's credibility. I find that the landlord's failure to adequately explain this by stating that there was a misunderstanding of the process, did not invite confidence that this tenancy was genuinely being ended in good faith as required under section 49 of the Act.

Accordingly I find that the landlord has not succeeded in verifying their good faith intent and therefore I find that the Two Month Notice to End Tenancy for Landlord's Use dated June 13, 2013 must be cancelled.

Based on evidence and testimony, I hereby order that the Two Month Notice to End Tenancy for Landlord's Use dated June 1, 2011 is cancelled and of no force nor effect.

I order that the tenant is entitled to be reimbursed for the cost of this application and I order that the tenant deduct \$50.00 from the next rental payment owed to the landlord.

Conclusion

The tenant is successful in the application and the landlord's Two Month Notice to End Tenancy for Landlord's Use is cancelled.

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: July 30, 2013

Residential Tenancy Branch