



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Century 21 Prudential Estates (RMD)
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL

Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking an order cancelling the landlord's 2 Month Notice to End Tenancy for Landlord's Use of the Property (the "Notice").

The tenant, his legal advocate, and the landlord's agent, representing the property management company representing the owner of the residential property (hereafter "landlord") appeared, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, neither party raised any issues regarding service of the application or the evidence.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Has the landlord provided sufficient evidence to support their Notice and is the tenant entitled to cancellation of the Notice?

Background and Evidence

These parties have previously been in dispute resolution on at least two other occasions in which it was established that there is no written tenancy agreement, that the tenancy began on or about December 1, 1999, that monthly rent is \$500, and that the tenant did not pay a security deposit. There has been no increase in rent since the tenancy began.

The rental unit is the ground level floor of a house and the landlord resides in the upper level.

Recited in the two previous dispute resolution Decisions issued by other Arbitrators, submitted into evidence by the tenant's legal advocate, on June 28, 2013, the landlord issued the tenant a 2 Month Notice for landlord's use of the property. A hearing on the tenant's application seeking cancellation of that Notice was held on August 15, 2013, resulting in the Notice being set aside due to the fact the landlord had failed to list a reason for ending the tenancy.

On July 28, 2013, the landlord served the tenant with another 2 Month Notice, the tenant applied to dispute this Notice, and a hearing was held on September 18, 2013, resulting in a Decision dated September 18, cancelling the Notice due to insufficient evidence.

Specifically the Notice stated that the reason the landlord required vacant possession of the rental unit 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."

In his Decision of September 18, 2013, the Arbitrator stated that the landlord provided no documentary evidence, witnesses or other evidence to support that the owner intended to occupy the entire home, further mentioning that the owner failed to attend the hearing to support the Notice.

In the present case, the landlord's agent, less than a week after the hearing and Decision of September 18, issued the tenant another 2 Month Notice to End Tenancy for Landlord's Use of the Property, stating the same reason as on their July 28, 2013, Notice.

Pursuant to the Dispute Resolution Rules of Procedure, the landlord's agent proceeded first in the hearing to give evidence to support the 2 Month Notice to End Tenancy for

Landlord's Use of Property issued to the tenant on September 24, 2013, by leaving it with the tenant.

The Notice was also dated September 24, 2013, and listed as reason 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."

Landlord's evidence-

The landlord testified that the house, a heritage home, is in extremely poor condition and is unsafe to the point that the residential property is now uninsurable.

The landlord further stated owner does not want to share the home with the tenant any longer as they parties do "not get along" and that the house needs to be vacant in order to perform repairs and services.

The landlord said that the rent paid by the tenant was 300% below market value, which results in the owner being "irritated." The landlord further mentioned several times in the hearing that the rent being paid by the tenant was too low.

The landlord's agent stated that he had expected the owner to participate in the telephone conference call hearing, but the owner failed to appear.

The landlord's relevant documentary evidence included a handwritten letter from the owner, a non renewal notice from the landlord's insurance company, mentioning non-receipt of electrical updates information, a copy of the Notice, dated September 24, 2013, a letter from the landlord's insurer regarding upgrades to the electrical system and a potential lapse in coverage, and a copy of the 2 Month Notice issued by the landlord, dated June 28, 2013.

Tenant's response-

The tenant's advocate submitted that there has been no change in circumstances since the last hearing and that the Decision of September 18, 2013, was res judicata as to this Notice, which should result in the automatic cancellation of the landlord's Notice. The legal advocate further pointed out that there has been no evidence submitted that that the landlord intends to occupy the rental unit and questioned the good faith intentions of the landlord in issuing the Notice.

The tenant testified that there are other tenants living in the upper floor and that the landlord has other tenants ready to move in. The tenant submitted that the new tenants are already receiving mail at the residential property.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

Once the tenant made an application to dispute the Notice, the landlord became responsible to prove the Notice to End Tenancy is valid.

The Notice was issued pursuant to section 49(3) of the Act which provides “a landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or close family member of the landlord intends in good faith to occupy the rental unit”.

If evidence shows that the landlord’s purpose in ending the tenancy is for a reason other than the one stated on the notice to end tenancy, then that evidence raises a question as to whether the landlord had a dishonest purpose. If the good faith intent of the landlord is called into question, as is the case here, the burden is on the landlord to establish that they truly intended to do what they said on the notice to end tenancy, and that the landlord is not acting dishonestly or with an ulterior motive for ending the tenancy.

In this case, I find that the evidence shows that the landlord did have an ulterior motive for ending the tenancy. In reaching this conclusion, I relied on the landlord’s agent evidence that the landlord was irritated that the tenant was paying rent substantially below market value.

I also accept the undisputed evidence of the tenant that rather than requiring vacant possession for an upgrade to the residential property, the owner/landlord has already sought and secured other tenants for the residential property, further calling into question the landlord’s true intention in issuing the Notice.

I accept the tenant’s submission that the landlord does not intend in good faith to live in the rental unit, but rather the landlord wishes to end the tenancy in order to re-rent the unit for a higher rent.

As a result, I find the landlord’s 2 Month Notice to End Tenancy for Landlord’s Use, issued and dated September 24, is not valid and not supported by the evidence, and

therefore has no force and effect. I order that the Notice be cancelled, with the effect that the tenancy will continue until ended in accordance with the *Act*.

I advise the landlord that the continued issuance of unfounded and unsupported Notices such as the present one issued shortly after receiving an adverse decision on the landlord's July 29, 2013, 2 Month Notice, which was issued following issuance of another Notice June 28, 2013, may constitute harassment and a loss of the tenant's quiet enjoyment, for which the tenant may seek monetary compensation from the landlord through an application for dispute resolution.

I further remind the landlord that he may also be liable under section 94.1 of the *Act*, which deals with Administrative Penalties.

Conclusion

The September 24, 2013, notice to end tenancy is cancelled, with the effect that the tenancy continues.

Dated: November 22, 2013

Residential Tenancy Branch

