



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, RP, AAT, FF

Introduction

This hearing was convened by way of a conference call in response to an application made by the tenant to: cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property; for an order asking the landlord to comply with the *Residential Tenancy Act* (referred to as the Act), regulation or tenancy agreement; to make repairs to the unit, site or property; to allow access to the unit or site and to recover the filing fee from the landlord for the cost of this application.

The tenant served the landlord by registered mail with a copy of the application, a copy of the amended application, the Notice of Hearing and documentary evidence to be used for the hearing. The landlord confirmed receipt of the all documents and based on this, I find the landlord was served in accordance with the Act.

The landlord appeared for the hearing with an agent who led the testimony. The tenant appeared for the hearing and provided documentary evidence prior to the hearing. Both parties provided affirmed testimony during the hearing and this, along with the tenant's documentary evidence, was considered in this decision.

At the start of the hearing, it was determined that the tenant had only submitted documentary evidence in relation to the notice to end tenancy, therefore, this hearing only dealt with the tenant's application to cancel the notice to end tenancy and as result, the remainder of the tenant's application is dismissed **with** leave to re-apply.

Issue(s) to be Decided

- Has the tenant applied for dispute resolution to cancel the notice within the allowable time limit?
- Is the tenant entitled to cancel the notice to end tenancy?

Background and Evidence

Both parties agreed that this month to month tenancy started on May 1, 2013. The tenant paid a security deposit of \$800.00 and a pet damage deposit of \$500.00 on April 29, 2013. A written tenancy agreement was completed which established rent for the upper portion of the home at \$1,600.00, payable on the first day of each month. The landlord and tenant completed an addendum to the tenancy agreement which stated that the tenancy agreement is entered into on the basis that if the tenant is able to rent out the basement suite, the rent payable to the landlord each month would be \$2,200.00; if the tenant could not rent out the basement suite, then the landlord was at liberty to re-rent the suite at their discretion.

The tenant testified that she had sublet the basement suite as per the agreement and had paid the landlord \$2,200.00 per month for the first four to five months of the tenancy. However, the tenant had to cease the sublet because it had been reported to the city. The city sent the landlord a letter in September, 2013, which was presented as evidence by the tenant, stating that only **one** rental suite was allowed per lot. The letter also stated that whilst the basement suite was registered with the city for rental purposes, the landlord had to either remove the basement suite or make the entire dwelling the landlord's principal residence so that only one rental suite existed on the property for rental.

The tenant testified that she ended the tenancy for her sub-tenants and then reverted back to paying the landlords \$1,600.00 per month as per the addendum. However, the landlords informed the tenant that they were going to move into the property in order to comply with the city's instructions to make the house their principal residence and issued the tenant the notice to end tenancy. The tenant testified that the landlord has other properties which she can move into and stated that they had no intention to move into the rental unit as evidenced by an advertisement she provided as evidence. The advertisement shows the entire six bedroom house (including the basement and upper portion of the home) for rent in the amount of \$2,200.00 available for November 1, 2013. The tenant submitted that the landlord is ending her tenancy because she cannot afford to pay the \$2,200.00 and is simply going to re-rent it to someone who can.

The landlord's agent testified that the landlord is simply complying with the notice issued to her by the city by moving into the rental suite as she cannot afford to make the payments on the house with the tenant only paying \$1,600.00. When questioned about the advertisement for the rental of the entire suite, the landlord's agent testified that, in addition to the landlord's intention to move in, she trying to re-rent out the entire suite because if she manages to do so, it will only be rented as one rental unit for the whole

property, thus complying with the city's instructions and stopping the pressure put on the landlord by the city.

Analysis

Section 49(8) of the Act states that a tenant may dispute a 2 Month Notice to End Tenancy for Landlord's Use of Property by making an Application for Dispute Resolution within 15 days after the date the tenant receives it. The tenant testified that the notice to end tenancy was received on November 5, 2013 but the landlord disputed this. The landlord's agent testified that it was served to the tenant by posting it to the door. The Act states that a document posted to the door is deemed to have been received three days later. Therefore, it is my finding that the tenant received the notice to end tenancy on November 3, 2013 and had until November 18, 2013 to dispute the notice.

As the tenant made the application to dispute the notice on November 18, 2013, I find that the tenant made the application within the allowable time limits stipulated by the Act. As the landlord needs to give the tenant two clear months of notice for it to be effective, pursuant to section 53 of the Act, the effective date of the notice to end tenancy is automatically changed to January 31, 2014. I also find that the contents of the notice to end tenancy are correct and on the approved form, as required by the Act.

In my consideration of the notice to end tenancy, I firstly focus on the tenancy agreement that the landlord and tenant signed together. The addendum on the agreement clearly states that the tenant is only responsible for paying \$1,600.00 for the upper portion of the home which she currently rents. The addendum states that **if** the tenant rents out the basement suite then the rent will be increased to \$2,200.00. However, the addendum is very specific in stating that if the tenant does **not** rent it out then the landlord is at liberty to rent it out at their discretion. Therefore I find that as the tenant is not renting out the basement suite, irrespective of the reasons, she has no obligation to pay the higher amount of \$2,200.00.

The landlord's agent indicated that the landlord's intention is to either occupy the property or rent out the whole house so that it is in compliance with the city bylaws. However, a notice to end tenancy for landlord's use of property under the Act is not to be used to satisfy the landlord's obligations towards the city, rather, it is intended to be issued to the tenant in good faith to end a tenancy exclusively for the reason stipulated on the notice. In this case, I find that the landlord has a duplicity of reasons to end the tenancy in that if the suite cannot be rented then there is an intention to move into the property. Therefore, I find that the notice to end tenancy is not valid as the landlord is

not able to end the tenancy to move other tenants in at a higher rate of rent. Plus having a different motive to end the tenancy than what is given in the notice is an indication of issuing the notice in bad faith.

The landlord's agent claimed that the landlord was under pressure by the city to comply with the notice issued to her. However, I find that the landlord has the ability to remove the basement suite as one of the options in the city's letter to comply with the notice and alleviate this pressure. As the basement suite is not part of the tenant's rental suite, the landlord does not impinge on the tenancy agreement the landlord currently has with the tenant.

The landlord's agent testified that the landlord does not have the funds to meet the house payments, but I find that this is not a sufficient reason to end a tenancy in this manner. The landlord provided insufficient evidence to meet the burden of proof in satisfying me that there is a clear and genuine intention of the landlord to occupy the tenant's rental suite and this is further corroborated by the tenant's evidence regarding the advertisement of the entire home for \$2,200.00 starting in November 1, 2013, a period after the notice to end tenancy was served to the tenant.

Conclusion

For the reasons set out above, I hereby cancel the 2 Month Notice to End Tenancy for Landlord's Use of Property. The tenancy will resume until it is ended in accordance with the Act.

As the tenant has been successful in cancelling this notice, I award the tenant \$50.00 for the cost of this application pursuant to Section 72(1) of the *Act*. The tenant may recover this cost by deducting \$50.00 from her next rent payment.

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: January 13, 2014

Residential Tenancy Branch

