



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Final Decision

Dispute Codes: CNC, CNL

Introduction

The first part of the hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a One-Month Notice to End Tenancy for Cause dated January 21, 2014. The hearing was reconvened to deal with the tenant's request to cancel a Two Month Notice to End Tenancy for Landlord's Use dated February 24, 2014 that was issued after the tenant made the application to dispute the first Notice. The 2-Month Notice was to end the tenancy on April 30, 2014 was issued by the landlord because the unit will be occupied by a close family member

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.

The tenant is alleging that the *Two Month Notice to End Tenancy for Landlord's Use* was issued in bad faith and therefore should be cancelled.

Remaining 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 in August, 2013, but the tenant had been a resident in the complex under a different tenancy since 2005. The current rent is \$700.00.

The landlord testified that the *Two Month Notice to End Tenancy for Landlord's Use* was issued and served on the tenant on February 24, 2014 because the landlord's son and his family intended to move home from out-of-province and needed to reside in the rental unit now occupied by the tenant.

This matter was reconvened to give the landlord an opportunity to submit evidence in regard to the landlord's claim that the 2-Month Notice was not issued in bad faith, as alleged by the tenant.

The landlord submitted into evidence copies of communications from relatives attesting to the fact that the landlord's son and his family were genuinely returning to live in the complex. The landlord submitted proof that her son listed his home for sale and provided the contact information of his realtor.

The tenant pointed out that:

- At the time the landlord issued a One Month Notice to End Tenancy for Cause, the landlord told the tenant that the 2-Month Notice was only being issued as "security" to endure that the tenant is forced to move out in case the One Month Notice to End Tenancy for Cause was cancelled after the hearing.
- The written witness statements submitted into evidence by the landlord to support the issuing of the 2-Month Notice had clearly been solicited after-the-fact. The statements are dated after the initial part of the hearing was held on March 10, 2014 and the realty listing is dated after the Two Month Notice to End Tenancy for Landlord's Use was already issued on February 24, 2014.
- The landlord has engaged in a course of harassment of the tenant and has followed this same pattern with other tenants in the past.
- There is now a vacant unit in the complex that is available for the landlord's son to move into, so there is no need to terminate this tenancy to have the tenant's unit available for the landlord's son.

The landlord argued that the reason the witness statements were collected after the previous hearing is because the landlord needed them to verify that her family is truly moving home. The landlord testified that none of the witnesses who wrote the statements were available to appear at the hearing because they were busy working. The landlord pointed out that these individuals would have no reason to lie.

According to the landlord, she and her son discussed the move and taking over the unit *verbally* prior to issuing the *Two Month Notice to End Tenancy for Landlord's Use* to the tenant. The landlord stated that this was by text and telephone and they did not realize that a record would be necessary. For this reason, there was no documentation that the landlord could submit that pre-dated the 2-Month Notice.

In regard to the date the realtor listed her son's property, the landlord acknowledged that her son's out-of-province home was not put up for sale *prior* to the February 24,

2014 Notice, but arrangements were in process for some time prior to the date of the Notice and the official listing was actually signed by her son a couple of days later.

In regard to the tenant's allegation that there was an available vacant unit in the complex that could house the landlord's son and his family, the landlord testified that this unit was already spoken for and in fact the papers were signed with the new tenants prior to February 24, 2014 before the *Two Month Notice to End Tenancy for Landlord's Use* was served on the tenant. According to the landlord a copy of the tenancy agreement for this other unit is available. However, the landlord stated that no verification was submitted to prove the date of the re-rental contract because the landlord did not realize that this would be required.

The landlord emphasized that they are validly entitled under the Act to take possession of the rental unit to house a close family member and the tenant's rental unit is genuinely needed for this purpose on the effective date of the Notice.

The landlord feels that the tenant's application to cancel the Notice has no merit and the landlord requests an Order of Possession based on the *Two Month Notice to End Tenancy for Landlord's Use*.

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.. (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* and is alleging that the Notice was issued in reprisal against the tenant for disputing the earlier *One Month Notice to End Tenancy for Cause* issued on January 21, 2014.

According to the tenant, the landlord admitted the Two Month Notice to End Tenancy for Landlord's Use was issued to ensure that the tenancy ended in the event that the landlord's One Month Notice to End Tenancy for Cause was not successful.

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. In this instance, the landlord gave verbal testimony, written witness statements and proof her son's home was for sale in preparation of returning to live in the rental unit.

I find that the witness statements were solicited by the landlord, *after* the Two Month Notice was served on the tenant and these witnesses were not in attendance at the hearing to be cross examined.

However, based on the evidence submitted by the landlord, I find that the tenant's son did list his out-of-province home for sale on February 28, 2014, shortly after the tenant was served with the 2-Month Notice. I find that this fact does support the landlord's testimony that her son is planning on moving.

I find that the timing of the landlord's 2-Month Notice, approximately one month after the tenant chose to dispute an unsupported One-Month Notice to End Tenancy for Cause, would naturally give rise a suspicion that the second Notice may have been served in reprisal and I find that the tenant genuinely believes that this is the case..

However, I also find that the tenant's allegation of bad faith was only supported by verbal testimony about a statement made by the landlord, and I find that this is not sufficient to establish that the landlord had an ulterior motive behind the *Two Month Notice to End Tenancy for Landlord's Use*.

I also accept the tenant's testimony that there is currently a vacant unit in the complex. That being said, I find that the landlord's claim that it has been re-rented is likely true on a balance of probabilities.

Given the above, I find that the landlord did furnish sufficient evidentiary proof supporting that this tenancy is being ended in good faith for the stated purpose of having a family member move in, as required under section 49 of the Act.

For this reason, I find that the *Two Month Notice to End Tenancy for Landlord's Use* dated February 24, 2014 can not be cancelled.

I find that, in the event that the landlord does not follow through with implementing the rental unit for the stated use specified in the Notice, in this case having her son move in, the tenant is at liberty make another application for compensation.

When a *Two-Month Notice to End Tenancy for Landlord's Use* has been issued under section 49 and the landlord fails to utilize the rental unit for the purpose stated in the Notice, then section 51(2) of the Act imposes an obligation on the landlord to pay additional compensation to the tenant.

Section 51(2) states that, in addition to the one month compensation for the final month of the tenancy payable under subsection (1), if

(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or

(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

the landlord, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

Based on evidence and testimony put forth at the hearing, I hereby order that the *Two Month Notice to End Tenancy for Landlord's Use* dated February 24, 2014 is valid and therefore cannot be cancelled.

At the hearing, the landlord made a request for an order of possession. Under the provisions of section 55(1)(a), upon the request of a landlord, I must issue an order of possession when I have upheld a Notice to End Tenancy. Accordingly, I so order.

I grant the landlord an Order of Possession based on the following terms:

- The tenant must vacate the unit on or before April 30, 2014 and the landlord is granted an enforceable Order of Possession effective on that date.
- The tenant 's security deposit, if any, will be refunded in accordance with section 38 of the Act.
- The tenant will be entitled to be credited with one month compensation under *section 51* of the Act which requires the landlord to pay, on or before the effective ending date of tenancy, an amount equivalent to one month's rent payable under the tenancy agreement. These funds can be allocated to the final month rent for February 2014, if the parties agree.

Notwithstanding the Order of Possession terminating the tenancy on April 30, 2014, should the tenant manage to find a suitable place to relocate prior to April 30, 2014, under the Act, the tenant is still at liberty to end the tenancy even earlier by:

- (a) giving the landlord at least 10 days' written notice to end the tenancy
- (b) paying to the landlord, on the date the tenant's notice is given, only the proportion of the rent due for the pro-rated part of the month based on the

tenant's departure date. This is a statutory right under section 50 of the Act.

- However, if the tenant has already been credited for, or paid the landlord for, the entire month's rent before giving the 10 day advance notice to vacate, the landlord must then refund any portion rent paid or credited for a period that falls after the effective moving date on the tenant's 10 Day notice.
- The tenant's choice to move earlier than April 30, 2014 will not affect their right to receive the equivalent of one month compensation under *section 51 above*.

I hereby grant the landlord an Order of Possession based on the *Two Month Notice to End Tenancy for Landlord's Use*, **effective Wednesday, April 30, 2014 at 1:00 p.m.** This order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that Court.

Based on the evidence provided for the first part of the hearing, the *One-Month Notice to End Tenancy for Cause* is cancelled and all communications between the parties are ordered to be only in writing.

Conclusion

The tenant is successful in the portion of their application seeking to cancel the *One-Month Notice to End Tenancy for Cause*. The tenant is not successful in the request to cancel the *Two Month Notice to End Tenancy for Landlord's Use* and the landlord is issued an Order of Possession based on the Two Month Notice to End Tenancy for Landlord's Use.

This final 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 10, 2014

Residential Tenancy Branch

