



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the 2 month Notice to End Tenancy dated July 11, 2014 was personally served on the Tenant on August 31, 2014. Further I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the landlord. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issue to be decided is whether the tenant is entitled to an order cancelling the two month Notice to End Tenancy dated July 11, 2014 and setting the end of tenancy for September 30, 2014?

Background and Evidence

The landlord and his wife and child, the landlord's brother and his wife and child and the landlord's parents live in the upstairs portion of the rental unit. There are two suites downstairs including the suite rented to the tenant.

The tenancy began on July 15, 2013. The present rent is \$625 per month payable on the third day of each month. The tenant paid a security deposit of \$312.50 at the start of the tenancy.

Grounds for Termination

The parties failed to provide the arbitrator with a copy of the 2 month The Notice to End Tenancy. However, they orally stated that it relies on section 49(3) of the Residential Tenancy Act which provides as follows:

Landlord's notice: landlord's use of property

- 49** (3) 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.

Policy Guideline #2 includes the following:

“2. Good Faith Requirement when Ending a Tenancy

GOOD FAITH REQUIREMENT

Good faith is an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage.

A claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End the Tenancy. This might be documented through:

- a Notice to End Tenancy at another rental unit;
- an agreement for sale and the purchaser's written request for the seller to issue a Notice to End Tenancy; or
- a local government document allowing a change to the rental unit (e.g., building permit) and a contract for the work.

If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch

may consider motive when determining whether to uphold a Notice to End Tenancy.

If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive for ending the tenancy.”

The landlord testified he has been trying to get vacant possession of the rental unit for an extended period of time. During the summer they intended to use the rental unit to house guests who would be attending a wedding. The landlord intends to use the suite as an internal playground and to expand it for the six adults and two children living upstairs. The landlord testified the tenant orally agreed to leave by the end of October but has now reneged on that oral agreement.

The tenant testified the landlord is not acting in good faith. He wishes to evict the tenants because they asked him for a signed tenancy agreement to give to social welfare and he refused to give it to them. The tenants made an application and on September 10, 2014 the arbitrator (in the absence of the landlord who failed to attend) dismissed the tenant’s application for a monetary order in the sum of \$2500 but ordered that the landlord comply with the Act by proving a copy of the tenancy agreement and setting out the terms of the agreement. The tenant further testified the landlord has made disparaging comments on the fact the tenant receives financial help from the Ministry.

Analysis:

This is a difficult case. The fact that the tenant may have orally agreed with the landlord to leave at the end of October is not sufficient to end the tenancy. The Act requires there to be a mutual agreement in writing.

The tenant has brought the good faith intention of the landlord into question. As a result the landlord has the burden of proof. On the basis of the conflicting evidence of the

parties I determined the landlord has not acted in good faith in issuing the 2 month Notice to End Tenancy. The ongoing conflict between the parties and the failure of the landlord to comply with the Act in giving a tenancy agreement and receipts has fueled the ongoing tense relationship between the parties. I determined the landlord has an ulterior motive for ending the tenancy (to get rid of the tenants who the landlord considers to be difficult) and this negates the good faith intention

Determination and Orders

I determined that the landlord has failed to establish sufficient cause to end the tenancy. As a result I ordered that the Notice to End Tenancy dated July 11, 2014 be set aside. The tenancy shall continue.

As the 2 month Notice to End Tenancy has been set aside the tenant no longer has the right to receive the equivalent of one month rent under section 51 of the Act. I have pasted this section to this decision as a courtesy to the parties.

Tenant's compensation: section 49 notice

- 51** (1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.
- (1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.
- (1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.
- (2) In addition to the amount 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, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

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: October 23, 2014

Residential Tenancy Branch

