



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property, dated October 28, 2014 ("2 Month Notice"), pursuant to section 49; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenant and the landlord's two agents, MM and DD (individually "landlord MM" and "landlord DD," and collectively "landlord"), attended the hearing and were each given a full opportunity to be heard, to present their sworn testimony, to make submissions and to call witnesses.

The landlord MM confirmed that he is not an individual landlord for the rental property but rather an operations manager who signed the 2 Month Notice, and that he represents the landlord company, SSW. The landlord DD confirmed that he is the general manager of the landlord company, SSW. Both landlord MM and landlord DD confirmed that they are authorized to represent the landlord company, SSW, as agents at this hearing.

The landlord DD testified that the tenant was served with the 2 Month Notice on October 28, 2014, by placing it under the door of his rental unit. In accordance with the powers delegated to me pursuant to section 71(2)(c) of the *Act* and as the tenant confirmed receipt of the 2 Month Notice, I find that the tenant was sufficiently served with the 2 Month Notice.

The tenant testified that he served the landlord with his Application for Dispute Resolution hearing package ("Application") on November 8, 2014, by way of registered mail. The landlord DD confirmed receipt of the Application. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was served with the Application as declared by the parties.

Preliminary Issues

During the hearing, the tenant requested an amendment to correct the spelling of the landlord's last name. The landlord MM confirmed that he had no objection to the tenant's request. Accordingly, pursuant to my authority under section 64(3)(c) of the *Act*, I amended the tenant's application to correct the spelling of the landlord's last name, which is now reflected on the front page of this decision.

During the hearing, the landlord DD confirmed that he would send a copy of the 2 Month Notice, via facsimile, to the Residential Tenancy Branch on December 8, 2014, as this document was not provided by either party for this hearing. I received the 2 Month Notice from the landlord and reviewed it before preparing this decision.

Issue to be Decided

Should the landlord's 2 Month Notice be cancelled?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The landlord DD testified that this periodic tenancy began on July 1, 2013. Monthly rent in the amount of \$545.00 is payable on the first day of each month. A security deposit of \$272.50 was paid by the tenant for this tenancy. The tenant continues to reside in the rental unit. The rental unit is a three bedroom apartment, that is occupied the tenant, a staff member of the landlord company SSW, and another non-staff member. The rental building has four rental units in total.

The landlord's 2 Month Notice, stating an effective move-out date of December 28, 2014, identified the following reason for seeking an end to this tenancy:

- *the landlord intends to convert the residential property to strata lots or a not for profit housing cooperative.*

During the hearing, the landlord DD clarified that the landlord intended to convert the residential property to a not for profit housing cooperative. He confirmed that he was not intending to convert the property to strata lots.

The landlord MM testified that this 4-unit rental building was built in 2010, around the time of the winter Olympics. The landlord company SSW was required to build the rental building for its staff members. Over the years since it was built, the company opened the housing to non-staff members who were permitted to rent the units. The landlord company SSW is a major outdoor spa with a massage pavilion. The company is now approximately 5 years old and has grown exponentially in size from a handful of staff members to approximately 100 staff members.

The landlord DD stated that he issued the 2 Month Notice to the tenant and the co-tenant in the rental unit because he intends to convert the unit to a not for profit housing cooperative. He testified that there is a need for staff housing, given the growth of the landlord company SSW and its members, and due to the housing shortage in the area. The tenant does not dispute that there is a housing shortage in the area and that the landlord may need housing for its staff members. Offers are being made by the landlord company SSW for staff members to live and work locally in the area. The landlord DD indicated that there are two employed staff members who currently require housing in the rental building, as they are both staying temporarily with friends in the area. The landlord DD stated that there is no required amount of staff for this rental building to be considered a not for profit housing cooperative.

The landlord DD stated that he contacted the municipality, which is the governing body of this property when it was originally built for staff housing for the landlord company SSW. He was advised that no permits or approvals were required for him to convert the rental property to a not for profit housing cooperative. He was told to issue 2 Month Notices to the non-staff members occupying the units in the rental building in order to convert the property. The landlord did not provide documentary evidence of the above information.

The landlord has not attempted to convert all four units in the building for this use. Only one unit is currently owned and occupied by the company SSW's owner, who is a staff member. The other three units, including the tenant's unit are occupied by non-staff members: one unit is occupied by 1 staff and 1 non-staff member; the other unit is occupied by 2 staff and 1 non-staff member; and the final unit is the tenant's unit, which is occupied by 1 staff and 2 non-staff members, including the tenant himself.

The landlord DD stated that two 2 Month Notices have been issued to the tenant and his co-tenant in the rental unit. The application of the co-tenant is not before me and I do not have written evidence of this other 2 Month Notice being issued. Only the 2 Month Notice issued to the tenant, with only his name listed as tenant, is before me. The landlord DD stated that no 2 Month Notices have been issued to the two other non-staff members who are renting the two other units in the building. He did not provide a reason for why this specific rental unit was singled out to be converted into the not for profit housing cooperative housing use. He simply stated that it was a three bedroom unit and both new staff members that required the housing now, could move into the rental unit if the tenant and co-tenant vacated. He testified that the notices to evict would be issued as the need arises, probably sometime in the new year 2015, possibly around January 2015, but there is no set date, as staff would be moved around.

The landlord DD stated that he waited as long as possible before issuing a 2 Month Notice to the tenant, as the need for this rental unit arose in the summer of 2014 but he waited until the end of October 2014. He stated that he offered compensation to the tenant for this 2 Month Notice, but the tenant rejected his offer. The tenant stated that he required housing in this rental building, as he lives and works in the area, and there is currently a housing shortage.

The landlord DD is not aware of the rent to be charged to these staff members who intend to occupy the rental unit. He stated that the rent is fairly low already and given that it is intended for a not for profit use, the rental rates would need to stay low.

The tenant testified that the landlord has an ulterior motive for evicting him from the rental unit. The tenant stated that the new staff member who recently began occupying the same rental unit, does not like him or the other co-tenant in the unit. He believes that this staff member is friends with the landlord and is asking for the tenant to be evicted. He indicated that the landlord is inventing a new use for the property to be used by staff members only, in order to evict him because of this personal problem with the new staff member. The landlord DD stated that he is not evicting the tenant because of this new staff member in the rental unit. He testified that complaints were made by this new staff member to the landlord, saying that the tenant was harassing him, but nothing was done about the complaints and it was a personality difference between the two. The tenant stated that he did not do anything to the new staff member in his rental unit.

The landlord DD stated that there are no other buildings owned by the landlord company SSW in the area and so new staff members cannot be relocated to another building. He indicated that more requests have been coming in for housing staff members.

Analysis

While I have turned my mind to the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

According to subsection 49(8) of the Act, a tenant may dispute a notice to end tenancy for landlord's use by making an application for dispute resolution within fifteen days after the date the tenant receives the notice. The tenant received the 2 Month Notice on October 28, 2014, and filed his Application on October 31, 2014. Therefore, he is within the time limit under the Act. The onus, therefore, shifts to the landlord to justify the basis of the 2 Month Notice.

Subsection 49(6)(d) of the Act sets out that a landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to convert the residential property into a not for profit housing cooperative under the *Cooperative Association Act*.

Residential Tenancy Policy Guideline 2: Good Faith Requirement When Ending a Tenancy states:

"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 that they do not have an ulterior motive for ending the tenancy."

“Residential Property” is defined under section 1 of the Act, as:

- “(a) a building, a part of a building or a related group of buildings, in which one or more rental units or common areas are located;*
- (b) the parcel or parcels on which the building, related group of buildings or common areas are located;*
- (c) the rental unit and common areas, and;*
- (d) any other structure located on the parcel or parcels.”*

As per section 49(6)(d) and the 2 Month Notice reason outlined above, the landlord must intend to convert the “residential property” which is defined as an entire building, not just a single rental unit, for not for profit cooperative housing use. The above definition of “residential property” also includes “the rental unit and common areas,” and the landlord intends to convert only the tenant’s rental unit for this use. However, the landlord cannot convert the common areas as well, as required by the above definition, given that there are still non-staff members occupying the other units and using these common areas. The landlord DD testified that he intended to evict the other non-staff members at different times, when the need arises.

Despite the housing shortage in the area, the additional number of staff employed by the company, the need to relocate these staff to the local area, and the increased number of applications currently being received and also expected shortly, the landlord has not issued additional 2 Month Notices and attempted to convert all four units in the building to a not for profit housing cooperative use. The tenant stated that it was suspect that the other two non-staff members have not yet received 2 Month Notices. Further, given the conflict between the new staff member and the tenant in the rental unit, which was admitted by the landlord, the motives of the landlord are called into question, particularly by the tenant, who raised the issue.

I find that the landlord may have had an ulterior motive for issuing the 2 Month Notice and it may not have been done in good faith, given the conflict between the new staff member and the tenant. The new staff member did not testify at this hearing.

In any event, based on a balance of probabilities and the evidence of the parties, I do not find that the landlord intended to convert the residential property into a not for profit housing cooperative, as per section 49(6)(d) of the Act. The landlord is not converting the entire residential property at this time, or even the common areas of the rental building. The landlord has not issued other 2 Month Notices to the two non-staff members in the two other units of the rental building. The landlord does not know when it will issue these other 2 Month Notices, as it is based on need. I find that this is a future event which may not even occur.

I find that the landlord has not met the onus of proof to show that the landlord intends to convert the residential property into a not for profit housing cooperative, in good faith.

Accordingly, I allow the tenant's application to cancel the 2 Month Notice. The 2 Month Notice is hereby cancelled and of no force and effect. This tenancy continues until it is ended in accordance with the *Act*.

As the tenant was successful in this Application, he is entitled to recover the filing fee of \$50.00 paid for this Application, from the landlord.

Conclusion

The 2 Month Notice, dated October 28, 2014, is cancelled and of no force and effect. This tenancy continues until it is ended in accordance with the *Act*.

I order that the tenant is entitled to deduct \$50.00 from his future rent at the rental unit, to recover the filing fee for this Application from the landlord. This is in accordance with the offsetting provisions of Section 72(2)(a) of the *Act*.

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: December 17, 2014

Residential Tenancy Branch

