



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNL, FF

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the tenant for an order to cancel a Two-Month Notice to End Tenancy for Landlord's Use dated October 31, 2014, and purporting to be effective December 31, 2014.

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.

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 April 24, 2014, and the rent is \$1,200.00. The tenant submitted into evidence of a copy of a Two-Month Notice to End Tenancy for Landlord Use dated October 31, 2014. The landlord had indicated on the form that the reason for the Two Month Notice was because, "*The rental unit will be occupied by the landlord or the landlord's spouse or a close family member... ..*".

The landlord stated that their elderly parents had decided to relocate to their community and will need occupy the home.

According to the landlord, they issued the 2-Month Notice to End Tenancy for Landlord's Use to the tenant because the unit is genuinely required for the above use. No evidence was submitted by the landlord.

The tenant raised the issue of bad faith on the part of the landlord and gave testimony that the landlord has other motives for trying to force the tenant to vacate. The tenant pointed out that they had ongoing disputes with the landlord about repairs and in fact felt it necessary to make an application seeking compensation, which is scheduled to be heard at a later date. The tenant testified that these are the true reasons that the landlord issued the Notice to them. The tenant alleges that the tenancy is being terminated in reprisal for the tenant's insistence on repairs and on this basis, the tenant asks that the 2-Month Notice to End Tenancy for Landlord's Use be cancelled for bad faith.

The tenant stated that the rental unit is also not a practical home for persons with any kind of mobility issues as the home has stairs.

The landlord argued that they intend on modifying the home to accommodate their parent's disabilities.

Analysis

Two Month Notice to End Tenancy for Landlord's Use

The burden of proof is on the landlord to establish that the Two-Month Notice to End Tenancy for Landlord's Use was issued in good faith.

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 the rental unit. (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.

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 for seeking to have the tenant vacate the residential premises.

Being that the burden is on the landlord to prove the landlord's good faith intent, once this issue has been raised, I find that I must consider the evidence in that light. Because the tenant disputes the motive and the landlord has not submitted any evidence to support their testimony that the unit will be occupied by parents relocation to the community, I find that the landlord has not succeeded in verifying their good faith intent to support their Two-Month Notice to End Tenancy for Landlord's Use .

Therefore I find that the Two Month Notice to End Tenancy for Landlord's Use must be cancelled.

Based on evidence and testimony, I hereby order that the Two Month Notice to End Tenancy for Landlord's Use dated October 31, 2014 is cancelled and of no force nor effect.

I find that the tenant is entitled to be compensated the cost of this application and I order that the tenant may deduct \$50.00 from the next rental payment owed to the landlord.

Conclusion

The tenant is successful in the application due to lack of evidence on the part of the landlord and the Two Month Notice to End Tenancy for Landlord's Use is cancelled.

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 10, 2014

Residential Tenancy Branch

