



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 tenants' 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 ("the 2 Month Notice") pursuant to section 49; and authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both tenants attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The landlord did not attend although the 9.30 a.m. teleconference continued until 9.49 a.m.

Preliminary Issue: Service of Documents

The tenant CS testified that the landlord personally served the 2 Month Notice by attending to the rental unit at midnight on December 15, 2014. Tenant CS testified that the landlord drove on the front lawn of the residential premises and shouted angrily to her while presenting the 2 Month Notice. Based on the evidence provided by the tenants, I find the tenants were duly served with the 2 Month Notice on December 15, 2014.

The tenant CS testified that she served the Application for Dispute Resolution package with Notice of Hearing on December 30, 2014 by registered mail. She testified that her check of the Canada Post Online Tracking system confirmed that the landlord had received the package. She also testified that, based on conversations with her landlord, he was aware of the hearing. Based on the evidence and pursuant to section 89 and 90 of the *Act*, I find the landlord deemed served with the Application for Dispute resolution package on January 4, 2015, 5 days after its registered mailing.

Issues to be Decided

Should the landlord's 2 Month Notice be cancelled?

Are the tenants entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenant CS testified that this one year fixed term tenancy began on February 15, 2014. The rental amount is \$1,600.00 payable on the first of each month. The tenant CS testified that the landlord continues to hold a security deposit in the amount of \$800.00 paid by the tenants on February 15, 2014.

The tenant CS testified that she was served the 2 Month Notice on December 15, 2014 under “somewhat unusual circumstances”. She testified that she has asked the landlord to provide some confirmation that the unit will be rented to a family member. She testified that she has received no response or information in response to that request.

Both tenants testified that, on several different occasions, the landlord has commented on their low rent and says they are getting “a really good deal”. The tenant CS testified that the landlord has said to her that he wishes he could raise their rent significantly as they are “getting such a discount” and similar comments to this effect.

The tenants testified that they are unaware of any family in this province who might be occupying the unit.

Analysis

The 2 Month Notice was submitted as documentary evidence by the tenants. The notice indicates that the landlord's reason to end the tenancy is that “the rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother or child) of the landlord or the landlord's spouse”. There are no other grounds provided within the 2 Month Notice.

Section 49 of the *Act* allows a landlord to provide a notice to end tenancy for the landlord's use of property. Section 49(3) of the *Act* requires that the landlord intend in good faith to occupy this unit with a close family member. The tenants claim that the landlord does not intend to occupy this unit with as claimed. They argue that he intends to re-rent the unit at a higher rental amount. The tenant applies to cancel this notice to end tenancy based on a lack of good faith with respect to this notice to end tenancy.

Residential Tenancy Policy Guideline No. 2 addresses the good faith requirement when ending a tenancy. It states that, “[g]ood 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 no other motive for one's actions. The landlord must truly intend to occupy the rental unit as stated on the landlord's Notice to End the Tenancy.

In this case, the tenant's testimony at the hearing raises a question as to the landlord's purpose

for issuing this notice. As with any tenant's application to end tenancy and particularly in a situation where the issue of good faith is raised, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy, justifying that notice. The landlord must establish that he does not have another motive for ending the tenancy. The landlord did not attend this hearing to do so.

Rule 10.1 of the Rules of Procedure provides as follows:

The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

This hearing proceeded in the absence of the landlord and this decision was made in the absence of any evidence by the landlord with respect to this matter. Since the landlord has failed to meet his burden in justifying the end of this tenancy and given the testimony of the tenants that questions the nature of the notice and the good faith of the landlord, I grant the tenants' application to cancel the notice to end tenancy. The tenancy will continue.

The tenant applied to recover the filing fee for this application. I grant the tenants' application to recover the filing fee by reducing a future monthly rental payment by \$50.00.

Conclusion

I grant the tenant's application to cancel the notice to end tenancy. The landlord's 2 Month Notice is cancelled and of no force or effect. The tenancy will continue until ended in accordance with the *Act*.

I grant the tenants' application to recover the filing fee by reducing a future monthly rental payment by \$50.00.

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 27, 2015

Residential Tenancy Branch

