



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WONG'S APARTMENT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL

Introduction

This hearing was convened in response to an application by the tenant filed on March 13, 2015 to cancel a 2 Month Notice to End Tenancy For Landlord's Use of Property (the Notice), dated March 04, 2015 with a stated effective date of June 30, 2015.

Both parties attended the hearing. The tenant was assisted by advocate. The landlord was represented by their son and agent for this matter. Each party was given opportunity to present all relevant evidence and testimony in respect to this dispute and to make relevant prior submission to the hearing and fully participate in the conference call hearing. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. At the outset the landlord requested an Order of Possession for the effective date of the Notice if I were to dismiss the tenant's application or uphold the landlord's Notice to End. It must be noted that in this type of application, the burden of proof rests with the landlord to provide evidence that the Notice issued was a valid Notice issued in good faith, for the stated reasons.

Issue(s) to be Decided

Is the Notice to End tenancy valid and issued in good faith for valid reasons?
Should the Notice to End Tenancy dated March 04, 2015 be set aside?
Is the landlord entitled to an Order of Possession?

Background and Evidence

The relevant evidence in this matter is as follows. The tenant submitted a copy of the 2 Month Notice to End for Landlord's Use of Property dated March 04, 2015. Neither party advanced any additional document evidence to this matter. The Notice to End was issued by the landlord of the rental unit for the following reasons;

-the rental unit will be occupied by the landlord or the landlord's spouse or close family member (father, mother, or child) of the landlord or the landlord's spouse.

and,

-the landlord intends to convert the rental unit for use by a caretaker, manager or superintendant of the residential property.

The tenant disputes the Notice to End on the basis the Notice was not given in good faith based on the landlord's prior conduct. The tenant testified that they have been a tenant for over 20 years and their experience has been that over time tenants have vacated and the landlord has renovated the units.

The landlord testified that they have a manager residing "downstairs" on the residential property and they intend to make the unit available to the manager; and, failing that course of action they (the agent of this matter and son of the landlord) would occupy it personally after some time renovating the unit. The tenant queried why their unit was chosen given their standing as a long term good tenant, and the landlord responded the tenant has refused the landlord entry upon being given notice to enter. However, it was confirmed by the parties the contentious incident occurred after the landlord gave the tenant the Notice to End currently in dispute, and irrelevant.

Analysis

In this type of application, if the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intended to do what they said on the Notice to End Tenancy, and that the landlord is not acting dishonestly or with an ulterior motive for ending the tenancy. The landlord must provide evidence that the Notice was given in good faith and issued for the stated reason.

Section 49 of the Act – **Landlord's Notice: Landlord's use of property**, clearly states that a landlord may end a tenancy under the provisions of Section 49 of the Act by giving notice to end the tenancy if they intend in good faith to end the tenancy for the reason stated in the 2 Month Notice to End. In this matter, the landlord claims they intend to act in possibly 1 way or a 2nd way – admittedly uncertain at this time – but regardless, with the end result being the tenant vacates the rental unit.

I find that **Residential Tenancy Policy Guideline #2 – Good Faith Requirement when Ending a Tenancy**, states that 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 purpose stated on the Notice to End the Tenancy. If evidence shows that the landlord's purpose in issuing a Notice to End Tenancy is for a reason other than the one stated on the Notice to End Tenancy, then that evidence raises a question as to whether the landlord has a dishonest purpose.

In this matter I find the landlord's testimony was generally vague. The landlord provided 2 reasons for wanting to end the tenancy without supporting evidence, nor clarity, or assertion as to which reason they were relying upon to seek an end to the tenancy for their own use. Given that the landlord issued the 2 Month Notice to End almost 7

weeks prior, I find it reasonable the landlord ought to have provided testimony firmly establishing for which of the 2 reasons they intend to end the tenancy. I find the landlord's indecision did not bolster or assist their testimony or determination for what they intend to use the rental unit. The lack of sufficient evidence in this matter certainly raises the specter of an ulterior motive; however, solely as a result of the above, I find the landlord has not proven a primary reason for which they intend *in good faith* to occupy the rental unit.

Therefore, I **Order** the 2 Month Notice to End Tenancy for Landlord's Use of Property dated March 04, 2015 **cancelled** and ineffective to end the tenancy. The landlord is at liberty to issue the tenant a new Notice to End for sufficient, but moreover, valid reason - as required by the Act.

Conclusion

The tenant's application is granted. The landlord's Notice to End of this matter is **null and of no effect** and the tenancy continues.

This Decision is final and binding on both parties.

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: April 22, 2015

Residential Tenancy Branch

