



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNL, OLC, RP, FF

Introduction

This hearing was convened by way of conference call in response to the tenants' application for more time to file an application to cancel a Notice to End Tenancy; for an Order to cancel a Two Month Notice to End Tenancy for landlords use of the property; for an Order for the landlord to comply with the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; for an Order for the landlord to make repairs to the unit, site or property; and to recover the filing fee from the landlords for the cost of this application.

The tenants, the landlord BB and an agent for the landlord attended the conference call hearing. The parties gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issues

At the outset of the hearing it was determined that the tenants had filed their application within the allowable 15 days to cancel the Two Month Notice to End Tenancy. Therefore the tenants were not required to apply for more time to file their application and this section of their claim was subsequently withdrawn.

RTB Rules of Procedure 2.3 states that “if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply.” In this regard I find that not all the claims on the tenants’ application are sufficiently related to the main issue to be dealt with together. I therefore will deal with the tenants’ application to cancel the Two Month Notice to End Tenancy and I will not deal with the remaining sections of the tenants’ claim at this hearing.

Issue(s) to be Decided

Are the tenants entitled to an Order to cancel the Two Month Notice to End Tenancy?

Background and Evidence

The parties agreed that this month to month tenancy started on May 01, 2012. Rent for this unit is \$1,250.00 per month. The tenancy agreement provides that rent is due on the first of each month. The landlord allowed the tenants to pay rent bi-weekly to assist them in catching up on outstanding rent.

The landlord testified that he served the tenants with a letter to end tenancy on April 01, 2015. This letter informed the tenants that the landlord was giving them three months’ notice as the house may have to be sold as it was a joint asset with BB’s ex-wife. If the house was put into BB’s name and he bought his wife out then he planned to do renovations and the house will then be put on the market. This letter goes onto say that BB’s brother will be moving into the house if it is not a forced sale and renovations would then start.

BB testified that at present he lives downstairs in a one bedroom unit and the tenants live upstairs in a three bedroom unit. BB’s circumstances have changed since he wrote the letter on April 01, 2015. BB testified that he has now married HF in May and after

consultation with HF they have decided to keep the house for at least a year and want to move into the upper portion of the house. BB testified that he is at present guardian to his son but since the paternity test proved that his son is his own child he will be getting shared custody of his son and his son will be coming to stay with BB and HF for at least two nights a week. Due to this BB needs to have the extra bedroom space for his son which is not possible in the lower unit.

BB testified that originally when he wrote the letter on April 1, 2015 he had intended to do some renovations to the unit; however, as the wedding was more expensive than planned they had to use the renovation money to pay the additional expenses. This requires BB and HF to keep the house for at least another year before they can do some minor renovation work and then either continue to live in it or sell it.

BB testified that he served the tenants with a legal Two Month Notice to End Tenancy on April 30, 2015. This Notice informed the tenants that the rental unit will be occupied by the landlord, the landlord's spouse or a close family member of the landlord or the landlord's spouse. BB testified that his brother will occupy the smaller lower unit as soon as BB and HF can move upstairs.

The landlord orally requested an Order of Possession of the rental unit effective by 4.00 p.m. on June 30, 2015.

WW disputed BB's claim and called the landlord's good faith in issuing the Two Month Notice to End Tenancy into question. WW testified that it is clear from the content of the original notice letter given to the tenants on April 01, 2015 that the landlord's intention is to move his brother into the tenants' unit and then sell the home. WW testified that he informed BB that this letter was not a proper notice and when the landlord served the legal Notice on April 30, 2015 the landlord did not tell the tenants that he was going to be moving into the unit or that anything had changed from what BB had stated in the letter on April 01, 2015.

WW testified that they do not believe that BB will be occupying the upper unit and therefore they seek an Order to cancel the Two Month Notice to End Tenancy issued on April 30, 2015.

Analysis

The parties presented other evidence that was not pertinent to my decision. I looked at the evidence that was pertinent and based my decision on this.

The *Act* allows a landlord to end a tenancy if the landlord intends in good faith to move into the rental unit themselves, or allow a close family member to move into the unit. The tenants have disputed the landlord's reason for ending the tenancy based on the information provided in a letter to the tenants on April 01, 2015. The tenants have raised questions about the landlord's good faith in ending the 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 Two Month 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.

I have considered the testimony of both parties and find the landlord's claims that he now needs to live in the larger unit as he has since married and will be having shared custody of his son. The lower unit is a one bedroom unit and the upper unit is a three bedroom unit. I have considered this when making my findings. With the landlord now being married and needing extra bedroom space for his son when he comes to stay over at the landlord's home I find it is likely that the landlord will require the extra space by moving into the upper unit. If the landlord's brother then moves into the lower unit this has no consequence on the upper unit or the Two Month Notice to End Tenancy.

The landlord gave a plausible explanation about his changing circumstances that now require him to occupy the upper unit and I find this explanation to be credible. The tenants are basing their claim that the landlord has not acted in good faith on the contents of the letter dated April 01, 2015. As the landlord's circumstances have changed since that letter was written the landlord was then entitled to serve the tenants with a Legal Two Month Notice to End Tenancy citing the reason that he will be occupying the rental unit.

I am therefore satisfied from the evidence before me that the landlord will occupy the upper unit and therefore the Two Month Notice to End Tenancy is upheld and the tenants' application to cancel the Two Month Notice to End Tenancy is dismissed.

I refer the parties to s. 55(1) of the *Act* which states:

55 (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

(a) the landlord makes an oral request for an order of possession, and

(b) the director dismisses the tenant's application or upholds the landlord's notice.

The landlord has orally requested an Order of Possession at the hearing. Having upheld the Two Month Notice to End Tenancy I will grant that Order. The effective date on the Two Month Notice to End Tenancy in this matter is June 30, 2015. I therefore grant the landlords an Order of Possession effective at 4.00 p.m. on June 30, 2015.

As the tenancy will be ending on June 30, 2015 I must dismiss the remainder of the tenants' application for an Order for the landlord to comply with the *Act*, regulations or tenancy agreement and for an Order for the landlord to make repairs to the unit, site or property. The tenants must also bear the cost of filing their application.

Conclusion

I HEREBY dismiss the tenants' application in its entirety.

I HEREBY ISSUE an Order of Possession in favour of the landlords effective at 4.00 p.m. on June 30, 2015. This Order must be served on the tenants, if the tenants fail to comply with the Order, the Order may be filed in the Supreme Court and enforced as an Order of that Court.

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: June 19, 2015

Residential Tenancy Branch

