



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNL MNDC

Introduction

The tenant applied under the *Residential Tenancy Act* (the “*Act*”) to cancel a 2 Month Notice to End Tenancy for Landlord’s Use of Property (the “2 Month Notice”), and for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement.

The tenant and landlord attended the teleconference hearing. At the start of the hearing I introduced myself and the participants and the hearing process and an opportunity to ask questions was provided to the parties. The parties were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony evidence and to make submissions to me.

The parties confirmed that they received documentary evidence from the other party and that they had the opportunity to review that documentary evidence prior to the hearing. I find the parties were sufficient served under the *Act*, as a result.

Preliminary and Procedural Matters

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated more than one matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice to End Tenancy. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenant’s request to set aside the 2 Month Notice at this proceeding. The balance of the tenant’s application which includes a monetary claim for \$2,560 is dismissed, **with leave to re-apply**.

At the outset of the hearing, the parties were advised that interruptions of the other party or the Arbitrator would not be tolerated during the hearing. The parties have an acrimonious landlord/tenant relationship. During the hearing, both parties continued to interrupt each other and myself as the Arbitrator, despite being ordered to cease interrupting.

Issue to be Decided

- Should the 2 Month Notice to End Tenancy for Landlord's Use of Property be cancelled?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on February 1, 2015. Monthly rent in the amount of \$600 is due on the first day of each month. A security deposit of \$300 was paid by the tenant at the start of the tenancy.

The tenant confirmed that she was served on May 23, 2015 with the 2 Month dated May 23, 2015. The effective vacancy date on the 2 Month Notice is listed as August 1, 2015. The tenant disputed the 2 Month Notice on June 8, 2015 which was within the allowable time limitation under the *Act* of 15 days as the 15th day falls on a Sunday and pursuant to the *Interpretation Act* the next business day would be June 8, 2015, which is the day the tenant applied to dispute the 2 Month Notice. Page two of the 2 Month Notice indicates the reason as "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."

The tenant indicated that she was disputing the 2 Month Notice because she felt the landlord had issued the 2 Month Notice in bad faith as the 2 Month Notice was issued just a few days after an inspection of the rental unit, and that the landlord advised that family investors advised the landlord to move out of the upper floor of the home on the property and into the rental unit which is a cabin on the same property, as she could get more rent for the upper floor of the home on the property compared to the rental unit.

The landlord testified that that she has a mortgage on the home on the property and that the mortgage insurance broker advised her that the mortgage requires insurance and that the property needs several major repairs before the mortgage insurance will be issued. The first repair was described as a deck and stairs repair due to rotting wood. The second repair was described as repair of the entire roof of the home. The landlord

testified that her access to the home will be removed during the deck and stair repair and that she intends to occupy and live in the cabin while the repairs are taking place, which she has no estimate on time frame as yet as they may find further repairs are necessary once they start the work on the home.

The tenant disputed the landlord's testimony and alleged that the landlord was "lying". The tenant referred to an e-mail dated May 12, 2015. In that e-mail the landlord wrote in part:

You appear to be unaware of crossing boundaries and the controlling nature of your actions.

Quite frankly I cannot see your continued occupancy. The is not working out for you and certainly is not working out for me.

[reproduced as written]

The tenant also testified that on May 21, 2015, the landlord asked to see the newly installed skylight in the rental unit, and when she arrived she had a camera in her hand. The tenant alleges that the landlord stated "You're devaluing my property" and took photos alleging that the landlord would use the photos in evidence.

The landlord testified that she has a long-term tenant in the home living in the basement that she does not want to evict as a "matter of economics" as the basement suite is a two-bedroom unit and results in more rent for the landlord than taking over the cabin which is has a sleeping loft and brings in less rent for the landlord while the renovations are taking place on the upper floor of the main home on the property. The landlord testified that she understands she could not re-rent the cabin for at least six months if the 2 Month Notice is upheld, given that the reason she is citing 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.

The tenant testified that she had a verbal agreement with the landlord that the month to month tenancy would be for a long term. The landlord did not agree that such an agreement was made. The written tenancy agreement is a month to month tenancy.

The landlord did not make an oral request for an order of possession during the hearing.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

2 Month Notice to End Tenancy for Landlord's Use of Property – The tenant disputed the 2 Month Notice by stating that she did not believe the 2 Month Notice was being issued in good faith. I find that whether landlord will be taking over the cabin as solely a better financial choice for her, or that the mortgage insurance broker requires the major repairs described above, or a combination of both of those reasons, the landlord has the right to issue a 2 Month Notice in this circumstance for the purpose described in the 2 Month Notice.

I afford no weight to the tenant's claim that a verbal agreement was made for the month to month tenancy to be for a long term as the written tenancy agreement does not support such and the landlord disputed the tenant's claim that a verbal agreement was made. The tenancy agreement signed by the parties is a month to month tenancy.

Based on the balance of probabilities, I find that the 2 Month Notice is **valid. I uphold** the 2 Month Notice as a result.

Section 55 of the *Act* states:

Order of possession for the landlord

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.**

[emphasis added]

The landlord did not make an oral request for an order of possession during the hearing.

Conclusion

The tenant's application is dismissed. I uphold the 2 Month Notice issued by the landlord dated May 23, 2015 with an effective vacancy date of August 1, 2015.

I find the tenancy ends on the effective vacancy date listed on the 2 Month Notice which is August 1, 2015. The tenant must vacate the rental unit by 1:00 p.m. on August 1, 2015.

As the landlord did not make an oral request for an order of possession, the landlord is at liberty to apply for an order of possession as a result.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: July 21, 2015

Residential Tenancy Branch

