



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant – CNL, FF

For the landlord – OPL, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant applied for to cancel a Two Month Notice to End Tenancy for landlord's use of the property (the Notice) and to recover the filing fee from the landlord for the cost of this application. The landlord applied for Order of Possession for landlord's use of the property and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord attended the conference call hearing and gave sworn testimony. A witness for the landlord also attended and the tenant was given the opportunity to cross examine the witness. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure.

Issue(s) to be Decided

- Is the tenant entitled to an Order cancelling the landlord's Notice?
- Is the landlord entitled to an Order of Possession?

Background and Evidence

The parties agreed that this tenancy began on November 11, 2014 for an initial fixed term until May 01, 2015; the tenancy then became a month to month tenancy. Monthly rent is \$1,100.00 due on the 1st of each month. The tenant paid a security deposit of \$550.00 and a pet deposit of \$200.00 at the beginning of the tenancy.

The subject of this dispute is the *2 Month Notice to End Tenancy for Landlord's Use of Property* issued on June 23, 2015, by leaving the Notice in the tenant's mailbox on that date. The Notice has an effective date of August 31, 2015. The reason indicated on the Notice is that the rental unit will be occupied by the landlord, the landlord's spouse, or close family member of the landlord or landlord's spouse.

The Notice informed the tenant that they had 15 days of receipt of the Notice to file an application for dispute resolution with the Residential Tenancy Branch ("RTB") to dispute the Notice; otherwise the tenant is conclusively presumed to have accepted that the tenancy is ending and must move out of the rental unit by the effective date listed on the Notice. The tenant filed their application within the 15 days allowed.

Pursuant to the Rules, the landlord proceeded first in the hearing and submitted evidence in support of the Notice.

The landlord testified that she had indicated to the tenant that it was her son in law moving into the unit; however, this was an error and it is in fact the landlord's stepson, the son of the landlord's common law husband. The landlord testified that her stepson has separated from his wife and he requires the rental unit for himself and his two daughters as he will have a shared custody arrangement with his wife. The landlord referred to a letter provided in evidence from her stepson in which he explains that he needs to reside in the rental unit until at least June 2016.

The landlord calls her stepson as a witness. The witness testified that he does intend to reside in the rental unit and that his father and the landlord have been in a common law relationship as husband and wife for over 30 years since he was around 10 years old.

The landlord testified that pursuant to the information on the Notice the landlord has not cashed the tenant's rent cheque for August as the tenant is entitled to this amount due to the Notice being issued.

The tenant declined to cross examine the witness. The tenant testified that at first the landlord said it was her son in law that was going to live in the rental unit and so the tenant disputed the Notice as a son in law is not a close family member in accordance with the *Act*. The tenant testified that she also has two sons who live in the rental unit and it is very difficult to find alternative accommodation in the area. The tenant stated that she thinks it is unfair that she has to move out of the unit with her children so the landlord's stepson can move in with his.

Analysis

Section 49(3) of the *Act* stipulates that a landlord who is an individual may end a tenancy in respect of a rental unit if the landlord, the landlord's spouse or a close family member (father, mother or child) of the landlord or the landlord's spouse intends in good faith to occupy the rental unit.

In considering whether the landlord has acted in good faith, a two part test is imposed, namely, that the landlord must truly intend to use the premises for the purposes stated on the notice to end the tenancy and that the landlord must not have a dishonest or ulterior motive as the primary motive for seeking to have the tenant vacate the residential premises.

I find that the landlord has submitted sufficient evidence that her stepson intends to occupy the rental unit for his own use for the foreseeable future or at the least until June 2016.

Further, after hearing the evidence of both parties, I cannot find that the landlord had an ulterior motive in issuing the Notice seeking the end of the tenancy.

I therefore find that, upon a balance of probabilities, the landlord has met the burden of proving the rental unit will be used for the stated purpose listed on the Notice and that the Notice was issued in good faith.

I therefore dismiss the tenant's application seeking to cancel the Notice, without leave to reapply.

The landlord and the tenant are hereby advised of the provisions of section 51(1) of the *Act*, which stipulates that a tenant who receives a notice to end a tenancy pursuant to section 49 of the *Act* is entitled to receive from the landlord before the effective date of the Notice an amount that is the equivalent of one month's rent payable under the tenancy agreement. As the landlord has not cashed the tenant's rent cheque for August, 2015, this provision has been met by the landlord.

The landlord and the tenant are also advised of the provisions of section 51(2) of the *Act*, which stipulates that the landlord must pay the tenant the equivalent of two months' rent payable under the tenancy agreement if steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 of the *Act* within a reasonable period after the effective date of the notice or if the rental unit is not used for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice.

I find the landlord is therefore entitled to an Order of Possession. As there are time constraints in issuing the tenant with the Order of Possession by the effective date of

the Notice, I hereby issue the Order of Possession and make it effective two days after service upon the tenant.

I find that the landlord is entitled to be reimbursed for the **\$50.00** cost of filing this application. I order that the landlord retain this amount from the security deposit of \$550.00 leaving a balance \$500.00 which must be returned to the tenant along with the pet deposit or otherwise dealt with in compliance with section 38 of the *Act*.

The tenant must bear the cost of filing her own application.

Conclusion

For the reasons stated above, the tenant's application is dismissed.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective two days after service on the tenant. This Order must be served on the Respondent. If the Respondent fails 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: August 26, 2015

Residential Tenancy Branch

