



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF

Introduction

This hearing was convened by way of conference call in response to the tenant's application for an Order to cancel a Two Month Notice to End Tenancy for landlord's use of the property; and to recover the filing fee from the landlord for the cost of this application.

The tenant and an agent for the landlord (the landlord's son) attended the conference call hearing. The parties gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The landlord's agent (the landlord) confirmed receipt of these documents. 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 to cancel the Two Month Notice to End Tenancy?

Background and Evidence

The parties agreed that this month to month tenancy started on September 01, 2005. Rent for this unit is currently \$799.50 per month and is due on the first of each month. The parties agreed that this was a verbal agreement between the landlord and tenant.

The landlord's agent testified that he currently lives in the upper unit of the house with his mother and the tenant lives in the basement unit. Around six months ago the landlord's agent started dating and he and his girlfriend want to move in together. They intend to occupy the basement unit as they need to have some privacy yet remain close to the landlord's agent's mother.

The landlord's agent testified that the tenant was served with a legal Two Month Notice to End Tenancy for Landlords Use of the Property (the Notice) on February 28, 2016 with an effective date of May 01, 2016. The Notice informed the tenant 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. The landlord's agent testified that he and his girlfriend intend to occupy the unit from May 01, 2016 and formally requested an Order of Possession effective on that date.

The tenant disputed the Notice and called the landlord's good faith in issuing the Notice into question. The tenant testified that on July 22, 2015 he was notified by the landlord that his rent was going up to \$950 from September, 01, 2015. The tenant informed the landlord that he cannot raise the rent above the amount allowed by the legislation. The landlord informed the tenant that if he did not pay the rent increase he would have to evict the tenant.

The tenant testified that on September 04, 2015 he received a letter from the landlord saying a realtor would like the unit to be vacated for the new owner. The tenant testified that he knew the house had been on the market but had not been privy to any information as to the house having been sold. The landlord gave the tenant a mutual agreement to end tenancy to sign; however, the tenant refused to sign this.

The tenant testified that on September 25, 2015 the landlord told the tenant that the new owners were taking possession on January 01, 2016 and the tenant would receive a Notice to End Tenancy. The tenant testified that nothing came in January but he did

receive the Two Month Notice saying that the landlord or a close family member will now be occupying the rental unit.

The tenant testified that due to all the previous attempts to evict the tenant he does not believe the landlord has issued the Notice on February 28, 2016 in good faith. The tenant testifies that if the landlord's son wants to occupy the rental unit for privacy then there is no privacy in the bedroom of the unit as all noise travels upstairs to the master bedroom.

The tenant testified that he does not believe the landlord's son will be occupying the rental unit in good faith and therefore the tenant seeks an Order to cancel the Notice.

The landlord's agent testified that going back to July, 2015 the landlord did handle the situation badly and this is regrettable. His father thought he could sell the home and it was put up for sale and eventually sold with one condition regarding an inspection. The purchaser did not get the house inspected and the deal fell through. The house was taken off the market in the summer of 2015. The landlord does not now have a realtor and as the family plans have changed they are not attempting to sell the house.

The tenant testified that he understood that the house was part of the divorce settlement between the landlord and his wife and the landlord had taken out a mortgage to buy his wife out of the home.

The landlord testified that his parents are not divorced. There is no settlement concerning the house and currently his parents financial affairs are joined as they are not legally separated yet.

Analysis

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 tenant has disputed the landlord's reason for ending the tenancy based on the previous attempt to evict the tenant and raise his rent. The tenant has 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.

The landlord's agent gave a plausible explanation that he has reached the stage in his life that he would like to live with his girlfriend. This arrangement requires some privacy from living with his mother upstairs while still remaining close to his mother and I find this explanation to be credible.

The tenant has based his claim that the landlord has not acted in good faith on the previous rent increase, the attempt to sell the house and the mutual agreement to end tenancy, which the tenant refused to sign. As the landlord's circumstances have changed and the house has been taken off the market when the last sale fell through; then the landlord was then entitled to serve the tenants with a Legal Two Month Notice to End Tenancy citing the reason that a close family member will be occupying the rental unit.

I am therefore satisfied from the evidence before me that the landlord's son and his girlfriend will occupy the rental unit and therefore the Notice is upheld and the tenant's application to cancel the Notice 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 to the landlord an order of possession of the rental unit if*

(a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and
(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Having upheld the Notice I grant the landlord an Order of Possession. The effective date on the Notice is May 01, 2016. However, as the date of this hearing is close to the effective date of the Notice, there is a strong possibility that the landlord will not receive this decision or the Order of Possession prior to May 01, 2016 I therefore grant the landlord an Order of Possession effective two days after service upon the tenant pursuant to s. 55 of the *Act*.

I refer the parties to s.51 of the *Act which states:*

51 (1) *A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.*

The landlord's agent understood this section of the *Act* and will reimburse one month's rent for April to the tenant on May 01, 2016

Conclusion

I HEREBY dismiss the tenants' application in its entirety.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective two days after service upon the tenant. This Order must be served on the tenant, if the tenant 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: April 27, 2016

Residential Tenancy Branch