



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

This hearing dealt with the tenants' application pursuant to the Residential Tenancy Act ("the Act") for cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use ("2 Month Notice") pursuant to section 49.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The landlord confirmed receipt of the tenants' Application for Dispute Resolution and the tenants' evidentiary submissions for this hearing.

Issue(s) to be Decided

Should the landlord's 2 Month Notice to End Tenancy be cancelled?

Background and Evidence

This tenancy began in April 2015 as a month to month tenancy. Both parties agreed that no written tenancy agreement was created. Both parties agreed that the tenants' monthly rent is \$575.00 payable on the first of each month. The tenants continue to reside in the rental unit. The landlord continues to retain a \$200.00 security deposit paid by the tenant on April 1, 2016.

On May 12, 2016, the landlord issued a 2 Month Notice to End Tenancy with an indication that the rental unit will be occupied by the landlord or the landlord's close family member. Tenant AK testified that she was told by phone that the landlord wished to end their tenancy but that she believes the landlord intends to re-rent the unit once she and her co-tenant have vacated. The landlord did not submit documentary evidence for this hearing. The landlord provided minimal testimony indicating only that he wants the tenant to move out.

While the effective date of the 2 Month Notice was listed as July 12, 2016, the corrected effective date, in accordance with the Act, should be July 30, 2016.

Analysis

When a tenant applies pursuant to section 49(8) of the *Act* within fifteen days of receiving the 2 Month Notice to End Tenancy for Landlord's Use of Property, the burden of proof lies on the landlord to show that the notice is justified. At this hearing, the landlord provided minimal evidence to support his 2 Month Notice. The landlord concentrated most of his testimony on the tenant's unpaid rent however the landlord had not filed an application with respect to the matter of unpaid rent.

Any end to tenancy, including an end to tenancy on the basis of a 2 Month Notice requires evidence to a balance of probabilities that the notice to end tenancy has been issued with justification. A Notice to End Tenancy for Landlord's use (2 Month Notice) provides specific reasons to end a tenancy.

Residential Tenancy Policy Guideline No. 2 addresses the good faith requirement of a 2 Month Notice to End Tenancy for Landlord's Use pursuant to each subsection to section 49 of the *Act*,

..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 purposes stated on the Notice to End 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 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.

Tenant AK provided sworn undisputed testimony as well as corroborating testimony of her co-tenant to support her position that the landlord intends to re-rent their rental unit. She submitted that the landlord provided no supporting documents or testimony to show that he intends to use the unit for his own purposes, particularly the landlord or the landlord's family moving into the rental unit. Given the threshold that the landlord must meet in showing his intended use of the rental unit and given that the landlord did not provide documentary evidence or other evidence to support his claim on the 2 Month Notice, I find that the landlord has not met the burden of proof to show that the 2 Month Notice to End Tenancy is justified. Therefore, the 2 Month Notice to End Tenancy should be cancelled. The tenancy shall continue.

Conclusion

The tenant's application is granted: the 2 Month Notice to End Tenancy is cancelled.
The tenancy shall continue.

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: July 4, 2016

Residential Tenancy Branch