



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, CNL, MT, FF

Introduction

On June 17, 2016, the Tenant submitted an Application for Dispute Resolution asking to cancel a 2 Month Notice to End Tenancy for Landlord Use of Property; to cancel a 1 Month Notice To End Tenancy For Cause; for more time to make an Application to cancel a notice; and to recover the filing fee for the Application.

The matter was set for a conference call hearing. Both parties appeared at the hearing. The Tenant was assisted by an advocate. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence, orally and in written and documentary form, and make submissions to me.

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 and Procedural Matters

At the start of the hearing the Tenant's advocate clarified that the Tenant is not disputing a 1 Month Notice To End Tenancy For Cause. She stated that the 1 Month Notice was considered in a previous hearing with the Parties. The Tenant's Application is amended and the request to cancel a 1 Month Notice To End Tenancy For Cause is dismissed.

Issues to be Decided

Should the Tenant be granted more time to make the Application to cancel a notice?
Should the Notice to end tenancy be cancelled?
Is the Landlord entitled to an order of possession?

Background and Evidence

The Landlord and Tenant both testified that the tenancy began on January 1, 2016, as a month to month tenancy. Rent in the amount of \$560.00 is payable on the first of each month. The Tenant paid the Landlord a security deposit in the amount of \$280.00.

The Landlord testified that the rental unit has three bedrooms and that he has two Tenants living there under separate oral tenancy agreements.

The Landlord testified that himself and his wife are 60 years old and not in good health. He testified that there has been too much stress for them recently which is affecting their mental and physical health. He testified that having Tenants makes too much trouble for them and that they want a peaceful home environment. He testified that the only way to help the situation is to end the tenancies for both Tenants and take back the entire house for their use. The Landlord testified that he plans to use one room for a gym and the other room for storage. The Landlord states that he is not going to rent the rooms any longer.

The Landlord issued the Tenant a 2 Month Notice To End Tenancy For Landlord's Use Of Property dated June 15, 2016 ("the Notice"). The reason for ending the tenancy on the Notice states:

The rental unit will be occupied by the Landlord or the Landlord's spouse or a close family member of the Landlord or the Landlord's spouse.

The Notice provides information for Tenants who receive the Notice. The Notice states that a Tenant has the right to dispute the Notice within 15 days after it is assumed to be received by filing an Application for Dispute Resolution at the Residential Tenancy Branch.

The Landlord also testified that his other Tenant is moving out on August 31, 2016. The Landlord provided documentary evidence of a letter from the other Tenant E.U. who states he is a Tenant at the rental unit and will be moving out of the rental unit on August 31, 2016.

In response to the Landlord's testimony, the Tenant's advocate submits that the Tenant saw the tenancy agreement for the other tenant, and submits that it had no end date. The Tenant's advocate submits that it sounds like the Landlord is tired of being of being a Landlord and wants to use the property for recreation. She submits that the Landlord has not proven that he needs use of the space. She submits that feeling stressed is not sufficient proof that the Landlord wants to move family into the unit. She submits that the Landlord has adequate space upstairs. She submits that being a Landlord is inconvenient to the Landlord and that the Tenant does not cause the Landlord any disruption.

The Tenant's advocate submits that it is important to note that the Landlord and Tenant participated in an earlier hearing in which the Tenant raised issues and the Tenant deserves to have his rights respected. She submits that the Landlord was unsuccessful in ending the tenancy in a previous hearing and has now issued a new Notice to end tenancy in an attempt to get the Tenant out.

The Tenant's advocate submits that there is no reason to evict the Tenant for the reason stated and that the Notice was not issued in good faith.

Section 51 of the *Act* states that a Tenant who receives a 2 Month Notice To End Tenancy For 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. If steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice, the Landlord must pay the Tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

Residential Tenancy Branch Policy Guideline #2 states that the *Act* allows a Landlord to end a tenancy if the Landlord intends in good faith to move in themselves, or allow a close family member to move into the unit. A claim of good faith requires honesty of intention with no ulterior motive. The Landlord must intend the use the rental unit for the purpose stated on the Notice.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The Tenant disputed the Notice on June 17, 2016, which is within the required timeframe to dispute the Notice. The Tenants Application requesting more time to dispute the Notice is not required.

The Notice indicates the rental unit will be occupied by the Landlord or the Landlord's spouse or a close family member of the Landlord or the Landlord's spouse. The Landlord testified he intends to occupy the unit. The Landlord does not have to prove that a close family member is moving into the unit. In addition the Landlord does not have to prove that he needs the space.

I find the Landlord's testimony and documentary evidence that the tenancy of the other Tenant is ending outweighs the suggestion from the Tenant's advocate that this may not be the case.

I find the Landlord's testimony to be straight forward and honest. The Landlord is feeling stressed by having Tenants and does not want to be a Landlord any longer. The Landlord testified that he will not be renting out the rooms. The Landlord testified he will use the rooms for a gym and for storage.

There is insufficient evidence from the Tenant to establish that the Notice was issued in bad faith. The Landlord is ending the tenancies of both of his Tenants. I do not find the testimony regarding the other hearings is enough to establish that the Landlords do not have a good faith intention to occupy the rental unit for themselves. I find that the Landlord has the right to cease being a Landlord if that is his honest intention. I do not find the Landlord has a hidden motive. I am satisfied that the Landlord intends to use the rental unit for the purpose stated in the Notice.

Both parties are encouraged to familiarize themselves with their rights and responsibilities regarding compensation under section 51 of the *Act*.

I dismiss the Tenant's Application to cancel the 2 Month Notice to End Tenancy For Landlord's Use Of Property dated June 15, 2016.

Under section 55 of the Act, when a Tenant's Application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the Notice complies with the requirements regarding form and content and I find that the Landlord is entitled to an order of possession effective by 1:00 p.m. on August 31, 2016, after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

As the Tenant was not successful with his Application, I do not grant recovery of the cost of the filing fee.

Conclusion

The Tenant's Application to cancel the 2 Month Notice To End Tenancy For Landlord's Use Of Property dated June 15, 2016, is dismissed.

I grant the Landlord an order of possession effective by 1:00 p.m. on August 31, 2016. The Tenant must be served with the order of possession.

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 28, 2016

Residential Tenancy Branch