



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL MNSD ERP RP OLC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of a 2 Month Notice to End Tenancy For Landlord's Use of Rental Property, pursuant to section 49;
- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33;

The hearing was conducted by conference call. All named parties attended the hearing.

Preliminary Issue – Scope of Application

Residential Tenancy Branch Rules of Procedure, Rule 2.3 states that, if, in the course of the dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

Aside from the issue of whether or not the landlord had grounds to issue the Notice to End Tenancy, I am exercising my discretion to dismiss the remainder of the issues identified in the tenants' application with leave to reapply as these matters are not related. Leave to reapply is not an extension of any applicable time limit.

Issues

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Background & Evidence

The rental unit is a 1 bedroom apartment in a 21 unit apartment complex. The tenancy began on July 1, 2001. The current monthly rent is \$1005.00 and is payable on the 1st day of each month.

The landlord served the tenant with a 2 Month Notice on July 23, 2016. The tenant acknowledged service of the 2 Month Notice. A copy of the Notice was not provided on file but the parties confirmed it was in compliance with the form and content requirements of section 52 of the Act.

The landlord submits that she intends to have her son move into the rental unit. She submits that the 21 unit apartment complex has never had a manager/caretaker unit and that she now needs her son to help out with the management of the complex. The landlord has owned the apartment complex for the previous 10 years and has managed the complex together with her husband in the past. The landlord submits that her husband passed away in January of 2016 and she can no longer take care of everything on her own. The rental unit is a one bedroom unit on the top floor and it is sufficient for a manager/caretaker suite.

The tenant is disputing the 2 Month Notice on the grounds that it was not issued in good faith. The tenant submits that the landlord attempted to end the tenancy for cause and in a decision dated June 4, 2013 the Tenant's application to cancel the 1 Month Notice to End Tenancy was successful and the Notice was cancelled. The tenant submits that the building has not previously had any manager/caretaker and the landlord is only utilizing that ground to end the tenancy.

Analysis

Section 49 of the Act contains provisions by which a landlord may end a tenancy for landlord's use of property by giving notice to end tenancy. Pursuant to section 49(8) of the Act, a tenant may dispute a 2 Month Notice by making an application for dispute resolution within fifteen days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the 2 Month Notice.

Further, 2 Month Notices have a good faith requirement. *Residential Tenancy Policy Guideline #2* "Good Faith Requirement when Ending a Tenancy" provides the following guidance:

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.

The landlord served the tenant with a Notice to End Tenancy for Cause on April 29, 2016. There is nothing in the previous decision in regards to the landlord intending to utilize the rental unit for her son to move-in and help manage the apartment complex. I find it curious that the landlord is now attempting to end the tenancy on that ground after a failed attempt at ending the tenancy on the grounds for cause. The landlords husband passed away in January of 2016 but there was no mention of needing help to manage the unit until after the 1 Month Notice to End Tenancy for Cause was dismissed.

I find that there is sufficient evidence of an ulterior motive to end the tenancy on the part of the landlord. The landlord has failed to establish that she does not have an ulterior motive for ending the tenancy and that she truly intends to use the rental unit for the purpose stated in the Notice.

Conclusion

I allow the tenant's application to cancel the landlord's 2 Month Notice, dated July 23, 2016, which is hereby cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

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: September 28, 2016

Residential Tenancy Branch

