



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 an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) by the tenant to cancel a 2 Month Notice to End Tenancy for Landlord’s Use of Property dated July 26, 2016 (the “2 Month Notice”).

The tenant, the landlord and an agent for the landlord (the “agent”) attended the hearing. The parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

Neither party raised any concerns regarding the service of evidence other than the tenant stating that she could not read a majority of the landlord’s evidence which was provided in a different language. The parties were advised that I could also not read most of the landlord’s evidence which was not provided in English, rather in an Asian language. The landlord was advised that I could not consider evidence that I could not read as a result.

Preliminary and Procedural Matter

During the hearing, the agent requested to call a witness J.W.W. (the “witness”). The parties were advised not to speak to the witness and that I would call her into the hearing. The agent provided the telephone number for the witness and before I could dial the number of the witness to bring the witness into the teleconference hearing, the witness had already called into the hearing herself. I immediately asked the witness how she knew to call into the hearing, and she advised that she was texted a minute earlier by the agent. As a result, the witness was excused from the hearing as it was clear that the agent had been communicating with the witness and which I determined would taint any testimony provided by the witness. The agent then requested to call another witness which I denied as the agent failed to comply with my direction with the previous witness and I was not confident that other witnesses had not been coached or had been communicated with in advance of being brought into the teleconference hearing.

Issue to be Decided

- Should the 2 Month Notice to End Tenancy for Landlord’s Use of Property be cancelled?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy began on February 15, 2013 and reverted to a month to month tenancy after February 14, 2015. The monthly rent is \$2,800.00 per month and is due on the 15th day of each month.

The parties agreed that the landlord served the tenant with the 2 Month Notice dated July 26, 2016 which was received by the tenant on July 31, 2016 and disputed on August 1, 2016.

The 2 Month Notice states the cause as "The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse." As noted above, a majority of the landlord's documentary evidence was not provided in English and is an Asian language. The agent admitted during the hearing that her father, the landlord, has plans to renovate the rental unit and wants to move into the rental unit himself as his current home is smaller than the rental unit and he wants to retire in the rental property and rent out the home he is currently residing in. The agent confirmed that no permits have been obtained regarding the renovation to the rental unit discussed during the hearing.

The tenant raised the issue of good faith as the landlord has provided three reasons so far as to what will be happening with the rental unit. The first reason was that the landlord's daughter was going to live in the rental unit, and then it changed to the landlord wanting to move into the rental unit and then it changed to the landlord wanting to renovate the rental unit.

In the landlord's evidence, the landlord submitted some drawings of the rental unit which the agent stated are the drawing related to the renovations the landlord would like to do which include a new kitchen, new staircase, new deck and new bathroom.

As noted above, the landlord's witness was excluded from the hearing as the witness confirmed that the agent had texted her prior to calling into the hearing even though the parties were advised not to speak to the witness.

Analysis

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

The tenant disputed the 2 Month Notice within the fifteen day timeline provided for under section 49 of the *Act* to dispute a 2 Month Notice. When a tenant disputes a Notice, the onus of proof reverts to the landlord to prove that the Notice is valid and should be upheld. If the landlord fails to prove the Notice is valid, the Notice will be cancelled.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof

has not met the onus to prove their claim and the claim fails. In addition, when a tenant has filed to cancel a 2 Month Notice for Landlord's Use of Property and calls into question the "good faith" requirement, the onus lies on the landlord to prove that the 2 Month Notice was issued with an honest intention, with no ulterior motive to end the tenancy.

Having served most of their evidence in an Asian language and not in English, I am unable to consider most of the landlord's documentary evidence. The drawings submitted I find supports a different reason other than what was identified on the 2 Month Notice. Based on the above, I find the landlord provided insufficient evidence to prove the reason as stated on the 2 Month Notice. I note that the landlord's witness was excused due to the agent failing to comply with my direction and was texting the witness during the hearing. As a result, I do not find the landlord or the agent to be credible during this hearing as they were communicating with the witness contrary to my direction. Therefore, I am unable to find that the 2 Month Notice was issued in good faith. I cancel the 2 Month Notice as a result. The 2 Month Notice is of no force or effect.

I order the tenancy to continue until ended in accordance with the *Act*.

Conclusion

The 2 Month Notice issued by the landlord is cancelled due to insufficient evidence.

I order the tenancy to continue until ended in accordance with the *Act*.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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 22, 2016

Residential Tenancy Branch