



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW HEARING DECISION

Dispute codes CNL, FF

Introduction

This hearing dealt with the review of an original decision dated July 21, 2016 in response to 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 recover the filing fee for this application from the landlord pursuant to section 72.

In the original decision the tenant's application was dismissed on the grounds that the tenant's application was not filed within the timeline permitted under the Act and the landlord was granted an order of possession. The original decision and order were subsequently suspended by way of a review consideration decision dated August 16, 2016 pending the outcome of this review hearing. The review hearing was granted on limited grounds and the issue of jurisdiction determined in the original decision was binding and not grounds for review.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions.

Issues

Should the original decision and order dated July 21, 2016 be confirmed, varied or set aside in relation to each of the following:

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

Is the tenant entitled to recover the filing fee paid for this application?

Background & Evidence

The rental unit is a one bedroom, one level residential house. The tenancy began on October 1, 2011. The tenancy agreement did not require the payment of any rent or security deposit.

The landlord served the tenant with a 2 Month Notice on May 12, 2016 which the tenant acknowledged receiving on the following day. The Notice was issued on the grounds that a family corporation owns the rental unit and it will be occupied by an individual who owns, or whose close family members own, all the voting shares.

The tenant's application was filed on May 29, 2016 which is within the timeline permitted under the Act.

On behalf of the landlord, E.G. testified that in August 2015, his father sustained a broken neck, a fractured pelvis plus various other significant injuries as a result of a roofing accident. As a result, his father is not currently capable of climbing stairs and his current home is not suitable for his condition. His father and mother are both in their 80's and they require the rental unit for living accommodations immediately. E.G. testified that the rental unit is most suitable for their needs as it is a small one level house with easy access. Further, E.G. testified that they were in the process of building a new condominium unit for his parents but due to construction delays it will not be ready until May 2017.

The tenant is disputing the 2 Month Notice on the grounds that it was not issued in good faith. The tenant testified that the landlord attempted to negotiate a new agreement 12 days after serving the 2 Month Notice and questioned why the landlord would draft a new lease until December 31, 2016 if he required the rental unit for personal use. The tenant submitted a copy of the proposed lease. The tenant submits that the landlord manages over 40 rental properties and currently lives in a 7000 square foot home. The tenant submits that the landlord has repeatedly attempted to end the tenancy and provided correspondence in support.

In reply, legal counsel for the landlord submits that the tenant does not dispute the evidence with respect to the father's age and condition. The landlord provided the tenant with a place to stay on a rent free basis but it was not intended to be rent free forever. The landlord did make attempts in the past to have the tenant either vacate the rental unit or agree to pay rent. Irrespective of this, the landlord now requires the rental unit as a result of the significant injuries suffered by the father.

In response to the tenants question of why a new lease was proposed after the issuance of the 2 Month Notice, L.P. testified on behalf of the landlord that at the time of the proposal, there was a possibility of another unit available for the landlord to use. Since that time, that other unit is no longer available.

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.

I accept the testimony of E.G. that his father and mother require the rental unit as living accommodations and that the rental unit would be suitable given his parents age and father's medical condition. The tenant did not dispute the testimony of E.G. with respect to the injuries sustained by his father, his current medical condition and the age of his parents. I find it is more probable than not that the father and mother require the rental unit as temporary living accommodations until more suitable accommodations are available. I accept the landlord's testimony that a new lease was proposed after the issuance of the 2 Month Notice as another unit may have been available at that time. Proposing a new lease doesn't take away from the fact that the landlord required a rental unit for their own use. It is up to the landlord which unit they require for their own use so long as they truly intend to utilize the unit for the stated purpose. Had the tenant agreed to the new lease terms, it is possible that the landlord may have found another

rental unit more suitable for their own use. I also dismiss the tenant's claim that the landlord is not acting in good faith as the landlord made previous attempts to end the tenancy. Again, this does not change the fact that the landlord now requires the rental unit for their own use and has demonstrated a good faith intention to utilize it as such.

I find that the landlord has provided sufficient evidence to justify that it has a good faith intention to utilize the rental unit for the purpose stated in the Notice. The tenant's application to cancel the 2 Month Notice is dismissed and the landlord is entitled to an Order of Possession pursuant to section 55 of the Act.

The Order of possession issued on July 21, 2016 is confirmed.

As the tenant was not successful in this application, I find that the tenant is not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

The Order of possession issued on July 21, 2016 is confirmed.

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: October 14, 2016

Residential Tenancy Branch