



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNL, FF

Introduction

The tenant has applied to cancel a two month Notice to end tenancy for landlords' use of the property that was issued on September 2, 2016 and to recover the filing fee cost from the landlord.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing. A copy of the Notice ending tenancy was supplied; no other written submissions were made by either party. I have considered all of the evidence provided.

Issue(s) to be Decided

Should the two month Notice ending tenancy for landlords' use of the property issued on September 2, 2016 be cancelled or must the landlord be issued an order of possession?

Background and Evidence

The tenancy commenced three or four years ago. The tenant rents a basement suite; the landlord resides in the upper level of the home. Rent in the sum of \$625.00 is due on the first day of each month.

The landlord and the tenant agreed that a two month Notice to end tenancy for landlords' use of the property was served on the tenant indicating that the tenant was required to vacate the rental unit on November 1, 2016. It was pointed out that the effective date would correct to the earliest date allowed; November 30, 2016,

The Notice gave the following reason:

"The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individuals spouse)."

The landlord stated that they wish to have an adult child move into the rental unit. Before the family can take possession the unit requires plumbing repairs and they wish to add another bathroom. The tenant has been told on numerous occasions that the landlord wants to use the property and that they want him gone. The unit and home have plumbing issues and once those are resolved the home will be used for personal use of the landlord. The landlord said they wish to commence the renovation and then move on. The landlord said they cannot have the tenant remain, that the unit needs to be vacant.

The tenant responded that in the past he was told there was a family issue with another relative who might want to move into the unit. The tenant was told that a renovation was required. This understanding is reflected in the tenants' application, where the tenant wrote that the landlord has said they wish to repair the sewage system. The tenant does not believe that repair constitutes a major repair and can be fixed while the tenant lives in the unit. The tenant said he is willing to accommodate the septic and plumbing repairs.

It was pointed out that the Notice did not indicate vacant possession was required for repairs, but for a close family member. The tenant responded that he is being given confusing information as to what it is the landlord plans to do with the rental unit. The tenant does not believe the landlords' intention is consistent. The tenant said he has been told that he is not paying enough rent.

The landlord said that they just want to use the home and that their adult daughter now wants to live in the unit. They were to complete the renovation and then the unit will no longer be rented.

Analysis

In order to evict a tenant for landlords' use of the property the landlord has the burden of proving the reasons on the Notice.

The tenant raised the issue of the intention of the landlord and his confidence in the plan the landlord says they have; what I found was essentially a good faith argument.

Residential Tenancy Branch policy suggests that good faith is an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage. 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.

Policy provides:

If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest

purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End 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.

From the evidence before me I find that there is sufficient confusion between the landlords' desire to renovate the rental unit and the intention to place a close family member in the unit. The landlord said that they wish to renovate the rental unit. There were no details provided on this planned renovation, such as length of time it might take. The landlord could only say that the unit must be vacant. This renovation would then be followed by use of the rental unit for the reason given on the Notice ending tenancy.

The tenant has raised the good faith intention of the landlord which I find has some basis. If the landlord wishes to renovate the rental unit and requires vacant possession for that purpose the landlord may issue a Notice ending tenancy for that reason. I find that the reason given on the Notice ending tenancy may well form a reason to end the tenancy at some point in the future; however, from the evidence before me I find that the landlord is motivated to end the tenancy to allow renovation first.

The ultimate motivation may be to allow a family member to reside in the unit; however I find that the immediate motivation for vacancy is to allow renovation and repair. There was no information supplied regarding the length of time a renovation might take; only that vacant possession was necessary.

I have no confidence that the renovation would take place within a reasonable period of time, allowing the landlord to comply with requirements of section 51(2) of the Act. Section 51 of the Act sets out compensation due to a tenant if a landlord does not comply with the reason given on a Notice and provides detail on the expected time frames for compliance with the reason given on a Notice issued pursuant to section 49 of the Act:

(2) In addition to the amount payable under subsection (1), if

*(a) 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
(b) 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, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

There is nothing to stop the landlord from proceeding with repairs and, if the landlord believes vacant possession is required the landlord may issue another Notice ending tenancy for that purpose. If the tenant disputes that Notice the landlord will have the burden of proving the reason on the Notice.

Therefore, I find on the balance of probabilities that the intention and motivation of the landlord is to first renovate and repair the rental unit, for an unknown period of time, and that the Notice ending tenancy issued on September 2, 2016 is cancelled. The tenancy will continue until it is ended in accordance with the Act.

As the application has merit I find that the tenant may deduct the \$100.00 filing fee from the next months' rent due.

Conclusion

The two month Notice ending tenancy for landlords' use of the property issued on September 2, 2016 is cancelled.

The tenant may deduct the \$100.00 filing fee from the next month's rent due.

This decision is final and binding 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: November 03, 2016

Residential Tenancy Branch