



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL FF

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Tenants on September 28, 2016. The Tenants filed seeking an order to cancel a 2 Month Notice to end tenancy for landlord's use of the property and to recover the cost of their filing fee.

The hearing was conducted via teleconference and was attended by the Landlords and one Tenant. Each person gave affirmed testimony. I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

The Tenant affirmed she was representing both Tenants in this matter. Therefore, for the remainder of this decision, terms or references to the Tenants importing the singular shall include the plural and vice versa, except where the context indicates otherwise.

Upon review of the Tenants' application for Dispute Resolution the female Landlord requested that her name be written in the correct order, as her first and last name had been reversed on the application. No one objected to this request; accordingly the style of cause has been amended to show the correct order of the female Landlord's name, pursuant to section 64(3)(c) of the Act.

Each party affirmed they served each other with copies of the same documents that they had served the Residential Tenancy Branch (RTB). Each party acknowledged receipt of those documents from each other and no issues regarding service or receipt were raised. As such, I accepted the Landlords' and Tenants' submissions as evidence for these proceedings.

Both parties were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Following is a summary of those submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Have the Landlords provided sufficient evidence to prove the 2 Month Notice dated September 21, 2016 was issued in good faith?

Background and Evidence

The parties entered into a fixed term tenancy agreement which began on November 1, 2014 and was scheduled to end on October 31, 2016; after which the tenancy would continue for another fixed period of time or on a month to month basis. Rent was \$1,900.00 payable on the first of each month. On September 26, 2014 the Tenants paid \$950.00 as the security deposit.

The Landlords served the Tenants a 2 month notice (the Notice) on September 21, 2016 when it was placed in the Tenants' mail box. That Notice was issued listing an effective date of November 30, 2016 for the reason that the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

The Landlords testified they were approached by a neighbour in May 2016 about replacing the common fence. They have since acquired estimates from contractors and determined the cost of that fence replacement is higher than they had first estimated. In addition, when they were at the rental unit they saw blackberry bushes grown up the side of the house up to the roof and into the siding. They asserted they had not checked the house for about a year prior to being there in May 2016 so they were surprised to see the bushes had grown so high. They cut the bushes back and when they returned in September 2016 they saw the bushes had grown taller again and into the siding. The Landlords stated there have also been issues with drainage in the laneway so they have now decided that they would move into the rental unit to allow them to work on the required maintenance.

The Tenant disputed the Landlords' submissions and stated the Landlords have known that she wanted to occupy the rental unit for a minimum of three years since the start of her tenancy. She submitted that when they negotiated the tenancy agreement and her rental amount they had also negotiated maintenance of the property whereby the Landlords would pay for the materials and she would have her friends conduct the work.

The Tenant testified that when she went to pay her rent on September 3, 2016, the Landlord tried to get her to sign a mutual agreement to end the tenancy effective September 30, 2017. That agreement included a handwritten statement from the Landlord that the rent would be increased to \$2,000.00 per month; as per the original submitted into evidence by the Tenant. The Tenant stated she refused to sign the mutual agreement at that time and she later found out that the rent increase the Landlord was seeking was not the legislated amount.

The Tenant stated she requested to sign a new lease and not the mutual agreement. The Tenant asserted that shortly after she informed the Landlords she would not be

agreeing to the rent increase and would not be signing the mutual agreement, she was served the 2 Month Notice.

The Landlords argued it is only the Tenant's assumption and opinion that they are not planning to move into the unit. They confirmed they had discussions with the Tenant about her plans after which they attempted to negotiate a timeline and rent increase at the same time. The Landlords stated they offered the Tenant an extra 3 months in the rental unit, as they originally planned to move into it in June 2017. When those negotiations failed they served her with the 2 Month Notice.

Analysis

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*. After careful consideration of the foregoing and on a balance of probabilities I find pursuant to section 62(2) of the *Act* as follows:

When a tenant disputes a 2 Month Notice to end tenancy, the landlord bears the burden of proof that the Notice was given in good faith. Residential Tenancy Policy Guideline 2 provides 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. I concur with the aforementioned and find this Policy is relevant to the issues before me.

Based on the aforementioned good faith requirement, the Landlords bear the burden to prove the following two part test:

- 1) The landlord must truly intend to use the premises for the purposes stated on the notice to end tenancy; and
- 2) The Landlord must not have an ulterior motive as the primary motive for seeking to have the tenant vacate the rental unit.

I accept the Landlords' submission that the owner has the right to choose to move into their rental unit. However, when determining the good faith requirement I cannot consider the 2 Month Notice issued September 21, 2016 in isolation. I must consider the events of this tenancy as a whole leading up to the issuance of that 2 Month Notice.

In this case I am not satisfied that the 2 Month Notice was issued September 21, 2016 due to the Landlords' needs to reside in the unit in November 2016 in order for them to conduct maintenance. Rather, I find there to be sufficient evidence before me which proves the Landlords had an ulterior motive for ending the tenancy as described below.

As noted above, from the Landlords' own submissions when their negotiations for a time line and rent increase failed they issued the 2 Month Notice. The Landlords attempted to have the Tenant mutually agree to a rent increase of \$100.00 per month in exchange

for allowing her to stay in the rental unit until September 30, 2017 if the Tenant(s) signed the mutual agreement to end tenancy.

I find it presumptuously suspicious that a couple weeks after the Tenant refused to sign the aforementioned mutual agreement she was served the 2 Month Notice. I do not accept the Landlords' submissions that they now have to reside in the rental unit to conduct maintenance on the fence, back laneway and blackberry bushes. If that were truly the case they ought to have issued the 2 Month Notice prior to negotiating an agreement that would allow the Tenant to continue to occupy the rental unit for another full year.

Based on the totality of the evidence before me, I find the Landlords submitted insufficient evidence to prove the good faith requirement relating to the issuance of the September 21, 2016 Notice. Accordingly, I uphold the Tenant's application and cancel the 2 Month Notice issued September 21, 2016. This Tenancy continues until such time as it is ended in accordance with the *Act*.

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director. The Tenants have succeeded with their application; therefore, I award recovery of the filing fee in the amount of **\$100.00**, pursuant to section 72(1) of the Act.

The parties are reminded of the provisions of section 72(2)(a) of the *Act*, which authorizes a tenant to reduce his rent payments by any amount the director orders a landlord to pay to a tenant, which in these circumstances is \$100.00.

Conclusion

The Tenants were successful with their application, the 2 Month Notice issued September 21, 2016 has been cancelled, and the Tenants were awarded their filing fee.

This decision is final, legally 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 22, 2016

Residential Tenancy Branch