



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SKYLARK REALTY INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL

Introduction

On November 7, 2016, the Tenant submitted an Application for Dispute Resolution asking to cancel a 2 Month Notice to End Tenancy for Landlord Use of Property; and to recover the filing fee for the Application.

The matter was set for a conference call hearing. Both parties appeared at the hearing. The Tenant was assisted by an advocate. The owner's property manager appeared for the Landlord. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence, orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Landlord pointed out that the Notice of Hearing bears a different address for the Landlord from that of the Tenants Application for Dispute Resolution. I informed the Landlord that this is simply a clerical error and has no effect on the validity of the Tenant's Application.

Issues to be Decided

- Should the Notice to end tenancy be cancelled?
- Is the Landlord entitled to an order of possession?

Background and Evidence

The Landlord and Tenant both testified that the tenancy began in June 2013, as a month to month tenancy. Rent in the amount of \$700.00 is payable on the first day of each month. The Tenant paid the Landlord a security deposit in the amount of \$350.00.

The Landlord testified that the owner of the rental unit purchased the property 4 or 5 months ago, and advised the Landlord that the owner wants to move into the rental unit. The owner directed the Landlord to issue the Tenant a 2 Month Notice To End Tenancy for Landlord Use of Property.

The Landlord issued the Tenant a 2 Month Notice To End Tenancy For Landlord's Use Of Property dated October 27, 2016 ("the 2 Month Notice"). The reason for ending the tenancy on the Notice states:

The rental unit will be occupied by the Landlord or the Landlord's spouse or a close family member of the Landlord or the Landlord's spouse.

The Notice provides information for Tenants who receive the Notice. The Notice states that a Tenant has the right to dispute the Notice within 15 days after it is assumed to be received by filing an Application for Dispute Resolution at the Residential Tenancy Branch.

The Tenant disputed the 2 month Notice within the required timelines.

In response to the Landlord's testimony, the Tenant submitted that the Landlord spoke to him to see if he would be able to afford to pay more rent, if the owner would allow the Tenant to stay. The Tenant told the Landlord that he could pay \$750.00 per month. The Tenant testified that the Landlord told him the owner wants \$850.00 to make the situation work.

The Tenant also questioned why the Landlord and his daughter would be moving in to the 2 bedroom unit when they live in a big house in Burnaby. The Tenant submitted that the Landlord has other property that he could move into that is larger.

In response, the Landlord stated that the Tenant is confused because the owner of the property is married to the person the Tenant describes as the daughter. He testified that the owners cannot afford to live in the upstairs unit of the house so they are moving into the two bedroom suite.

The Landlord testified that he raised the issue of rent with the owner, regarding whether the Tenant could stay if he paid more rent, and the Landlord testified that the owner said

no. The Landlord stated that the owner said paying more money is not the issue. The Landlord testified that the Tenant has made a false statement by saying the owner was willing to accept \$850.00 for rent to let the Tenant stay.

Section 51 of the *Act* states that a Tenant who receives a 2 Month Notice To End Tenancy For Landlord's Use Of Property is entitled to receive from the Landlord on or before the effective date of the Landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

Analysis

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

Residential Tenancy Branch Policy Guideline #2 states that the *Act* allows a Landlord to end a tenancy if the Landlord intends in good faith to move in themselves, or allow a close family member to move into the unit. A claim of good faith requires honesty of intention with no ulterior motive. The Landlord must intend the use the rental unit for the purpose stated on the Notice. The Guideline states:

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.

I find that the question of the Landlord's motive has been raised. The Landlord did not provide any documentary evidence or statements from the owner in support of the 2 Month Notice that the owner intends to move into the unit. The owner was not present at the hearing to provide affirmed testimony.

I find that the Landlord has not met the burden to prove the intent to move into the rental unit.

I grant the Tenant's application to cancel the 2 Month Notice To End Tenancy For Landlord's use of property dated October 27, 2016. The 2 Month Notice is cancelled.

Having cancelled the 2 Month Notice To End Tenancy, the tenancy remains in effect and the Tenant remains obligated to pay rent when due. The Tenant has withheld rent for the month of December 2016, in anticipation the tenancy may end pursuant to the 2 Month Notice.

I order the Tenant to pay rent to the Landlord for the month of December 2016, immediately upon receipt of this Decision. Failure to do so will entitle the Landlord to serve the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Landlord to repay the \$100.00 fee that the Tenant paid to make application for dispute resolution. The Tenant may withhold \$100.00 from one future rent payment.

Conclusion

The Tenant's Application to cancel the 2 Month Notice To End Tenancy For Landlord's Use Of Property dated October 27, 2016, is granted. The 2 Month Notice is cancelled.

The tenancy will continue until 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: December 29, 2016

Residential Tenancy Branch