



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

<u>Dispute Codes</u>	Landlord:	OPL FF
	Tenant:	CNL OLC FF

Introduction

This hearing dealt with cross applications for Dispute Resolution pursuant to the *Residential Tenancy Act* (the “*Act*”).

The Landlord's Application for Dispute Resolution was submitted to the Residential Tenancy Branch on October 20, 2016. The Landlord applied for the following relief pursuant to the *Act*:

- an order of possession pursuant to a notice to end tenancy for landlord's use of property; and
- an order granting recovery of the filing fee.

The Tenant's Application for Dispute Resolution was received at the Residential Tenancy Branch on October 11, 2016. The Tenant applied for the following relief pursuant to the *Act*:

- an order cancelling a notice to end tenancy for landlord's use of property;
- an order that the Landlord comply with the *Act*, regulation or a tenancy agreement; and
- an order granting recovery of the filing fee.

Each party attended the hearing on their own behalf. Both provided a solemn affirmation. The parties also confirmed receipt of the other's Application packages and documentary evidence by registered mail. No issues were raised with respect to service or receipt of these documents.

The parties were given the opportunity to present his evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all oral and documentary 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.

Issues to be Decided

1. Is the Landlord entitled to an order of possession?
2. Is the Landlord entitled to an order granting recovery of the filing fee?
3. Is the Tenant entitled to have the 2 Month Notice cancelled?
4. Is the Tenant entitled to an order that the Landlord comply with the Act, regulation or a tenancy agreement?
5. Is the Tenant entitled to an order granting recovery of the filing fee?

Background

The Tenant submitted with her documentary evidence a copy of the written tenancy agreement between the parties. It confirms a fixed-term tenancy was in place from September 1, 2015 to August 31, 2016. The parties did not agree on the status of the tenancy as of September 1, 2016. Rent in the amount of \$3,500.00 per month is due on the first day of each month.

The Landlord bears the onus of demonstrating the rental property will be put to the use indicated on a 2 Month Notice to End Tenancy for Landlord's Use of Property, dated October 3, 2016 (the "2 Month Notice"). He submitted that he issued the 2 Month Notice because he intends for his son to occupy the rental unit. Further, he testified to his belief the tenancy agreement required the Tenant to move out of the rental unit on August 31, 2016. However, there is no application before me seeking to end the tenancy on this basis.

In reply, the Tenant testified to her understanding that the Tenancy continued on a month-to-month basis after August 31, 2016. She relied on the tenancy agreement in support, noting that the parties did not initial the appropriate fields that would require the Tenant to move out at the end of the fixed term.

In addition, the Tenant submitted that the Landlord has not acted in good faith in issuing the 2 Month Notice. She asserts the Landlord's son is not going to move into the rental unit, but that he intends to sell or re-rent the property.

In support, the Tenant referred me to an email exchange on July 6, 2016, a copy of which was submitted with the Tenant's evidence. In it, the Landlord advised that "Our Fixed Term Lease Agreement will finish on End of Aug,2016." In reply, the Tenant states she was "planning on staying and continuing month-to-month."

On or about July 8, 2016, the Landlord provided the Tenant with a type-written notice, asking her to move out of the rental unit at the end of the fixed term. The notice stated:

*Refer to our FIXED LEASE AGREEMENT that Ended Aug,31,2016;
Pls move out at this Date; or
If you need more time(Three Months According Contract);
Pls Move out Latest Oct,31,2015.*

[Reproduced as written.]

The Tenant provided a copy of the July 8 notice with her documentary evidence.

Subsequently, on or about August 9, 2016, the Landlord gave the Tenant a further type-written notice. It stated: "I am looking to sell the property which is the reason for your previous move out notice."

The Tenant testified she was later approached by two real estate agents in August and September 2016, both of whom wanted to take photographs of the property. The Tenant was cooperative. In support, the Tenant submitted an email exchange between herself and the Landlord on August 31, 2016. In the exchange, the Landlord advised that a real estate agent would be contacting her to "get some photos fm the unit." The Tenant replied: "I will contact him today or tomorrow. What happened with the other guy? He came by and took photos a couple weeks ago."

Finally, the Tenant submitted copies text messages she exchanged with a realtor. In one message, dated September 15, 2016, the realtor wrote: "I'm waiting on photos before the listing goes live...We will do our best to sell to an investor And put in a recommendation to have you extend tenancy."

Analysis

Section 49(3) of the *Act* permits a landlord to end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

In this case, the Landlord issued the 2 Month Notice on the basis that his son will be moving into the rental unit.

The tenant seeks an order cancelling the 2 Month Notice. She says the Landlord has not acted in good faith and that his intention is to sell the rental property. The Tenant has provided documentary evidence in support. She wishes to remain in the rental unit.

Residential Tenancy Branch Policy Guideline 2 elaborates upon the meaning of “good faith”. It states:

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...

...

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.”

[Reproduced as written.]

I find that the Landlord has not demonstrated good faith. That is, he has not demonstrated to me that his son will be moving into the rental property. Rather, the preponderance of evidence provided by the Tenant confirms – and I find – that the Landlord’s motivation for ending the tenancy is to sell the rental property.

Accordingly, I find that the 2 Month Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

Having been successful, the Tenant is entitled to recover the \$100.00 filing fee, which I order may be deducted from a future rent payment.

Conclusion

I find that the 2 Month Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

The Landlord's Application is dismissed.

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 02, 2016

Residential Tenancy Branch