



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF

Introduction

On December 23, 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 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.

The parties confirmed that they are in receipt of the evidence that I have before 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

A previous hearing involving the parties was held on December 14, 2016. The Landlord failed to attend the hearing to provide evidence regarding grounds to end the tenancy. The Arbitrator cancelled the 2 Month Notice To End Tenancy dated October 15, 2016.

The Tenant submitted that this is a re-hearing of a matter that has already been decided at the earlier Dispute Resolution hearing. He submits that the Landlord issuing him another Notice To End Tenancy amounts to harassment.

The Tenant requested an adjournment for more time to provide evidence in support of his Application.

The Landlord submitted that he does not in agreement to allow for an adjournment of the matter.

I find that this matter has not already been decided. The Arbitrator at the earlier hearing dismissed a 2 Month Notice to End Tenancy dated October 15, 2016, because the Landlord failed to attend the hearing. The Arbitrator did not take testimony from the parties and decide whether or not the Landlord intends to move into the rental property.

In this hearing, the Tenant is disputing a 2 Month Notice To End Tenancy dated December 16, 2016. The merit of this 2 Month Notice has not been heard. I find that the Landlord has a right to issue a 2 Month Notice For Landlord use of Property and that exercising his right does not amount to harassment.

The Tenant had more than 30 days to prepare his evidence to dispute the 2 Month Notice and his request for an adjournment is denied.

Issues to be Decided

- Should the 2 Month Notice to end tenancy dated December 16, 2016, be cancelled?
- Is the Landlord entitled to an order of possession?

Background and Evidence

The parties testified that the tenancy began in April 2001, and is currently a month to month tenancy. Rent in the amount of \$875.00 is payable on the first day of each month. The Tenant paid the Landlord a security deposit in the amount of \$437.50.

The Landlord testified that he purchased the property on October 15, 2016. The Landlord testified that he sold the condo that he was living in, and issued the Tenant the 2 Month Notice to End Tenancy For Landlord Use of Property dated October 15, 2016. The Landlord testified that he failed to pick up the registered mail that notified him of the dispute hearing and he did not attend the hearing. The Landlord testified that the Tenant failed to mention the hearing to him during conversations they had prior to the hearing.

The Landlord issued the Tenant another 2 Month Notice to End Tenancy. The Landlord issued the Tenant a 2 Month Notice To End Tenancy For Landlord's Use Of Property dated December 16, 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 Landlord testified that because his condo has sold, he is living with relatives which is an extreme inconvenience for him. The Landlord testified that it is his intention to live in the dispute residence as his primary residence. The Landlord testified that he needs to move into the rental property.

The Landlord requests an order of possession for the effective date of the 2 Month Notice.

The Tenant disputed the 2 month Notice on December 23, 2016, within the required timeframe.

In response to the Landlord's testimony, the Tenant testified that the Landlord purchased the rental property for \$1,600,000.00 in cash. The Tenant submitted that it is improbable that the Landlord want to move into the rental property as it is in a working class neighbourhood.

The Tenant testified that he believes the Landlord would get more rent money if he re-rents the property and that the Landlord's 2 Month Notice is an attempt to avoid rent control.

Analysis

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, 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.

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.

If 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 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 must pay the Tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

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

The Landlord testified he intends to occupy the unit.

The Tenant made suggestions surrounding the intent of the Landlord to live at the rental property. I find that there is insufficient evidence from the Tenant to establish that the 2 Month Notice was issued in bad faith.

I do not find the suggestions of the Tenant are enough to establish that the Landlord does not have a good faith intention to occupy the rental unit. There is no evidence to support the Tenant's suggestion that the Landlord has a hidden motive. I am satisfied that the Landlord intends to use the rental unit for the purpose stated in the Notice.

I dismiss the Tenant's Application to cancel the 2 Month Notice to End Tenancy For Landlord's Use Of Property dated December 16, 2016.

The parties are encouraged to familiarize themselves with their rights and responsibilities under section 51 of the *Act*.

Under section 55 of the Act, when a Tenant's Application to cancel a Notice to end tenancy is dismissed and I am satisfied that the notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the 2 Month Notice complies with the requirements regarding form and content and I find that the Landlord is entitled to an order of possession on the effective day of the 2 Month Notice. The Landlord is granted an order of possession effective by 1:00 p.m. on March 1, 2017, after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

As the Tenant was not successful with his Application, I do not grant recovery of the cost of the filing fee.

Conclusion

The Tenant's Application to cancel the 2 Month Notice To End Tenancy For Landlord's Use Of Property dated December 16, 2016, is dismissed.

I grant the Landlord an order of possession effective by 1:00 p.m. on March 1, 2017. The Tenant must be served with the order of possession.

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: January 23, 2017

Residential Tenancy Branch