



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 December 12, 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. Evidence was reviewed; the landlord confirmed receipt of the tenants' evidence within the required time limit. The landlord did not make a written submission. The parties were provided with an opportunity to ask questions about the hearing process. The parties were able to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Issue(s) to be Decided

Should the two month Notice ending tenancy for landlords' use of the property issued on December 12, 2016 be cancelled or must the landlord be issued an order of possession?

Background and Evidence

The tenancy commenced on November 1, 2012. Rent is due on the first day of each month in the sum of \$1,700.00. A copy of the tenancy agreement was supplied as evidence. The tenancy was a fixed term that converted to a month-to-month term effective March 2013.

The landlord and the tenant agree that a two month Notice to end tenancy for landlords' use of the property was served on the tenants indicating that the tenants were required to vacate the rental unit on December 12, 2016. The Notice was left on the back porch to the home and was received by the tenants on December 18, 2016.

The reason stated for the Notice to End Tenancy was:

"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 individual's spouse."

The landlord said that the Notice was issued as her grandparents will move into the rental unit.

The tenant responded that on June 10, 2016 the landlord attempted to raise the rent by \$300.00, via an email sent to the tenants. The tenants responded that increase was not legal. On June 29, 2016 the landlord sent another email indicating rent would increase by \$200.00. The tenants replied that notice must be given in the approved form in the correct amount.

On October 3, 2016 the landlord emailed the tenants to say her cousins would move into the rental unit and the tenants must vacate by December 5, 2016. The tenants responded to the landlord on October 7, 2016; saying it was unfortunate the landlord was resorting to such measures. On November 12, 2016 the landlord replied that the house was needed so that renovations could be completed as the landlords' grandparents were going to visit. The landlord also wrote that there was no binding tenancy agreement.

The tenant submits that the landlord has not shown good faith and has ulterior motives for eviction as the tenants refuse to accept a rent increase beyond that allowed by the legislation.

The landlord said she is new to Canada and not aware of the rules. The tenant responded that the landlords' use of the English language is very good.

Analysis

The landlord has issued a Notice to end tenancy, relying on section 49(3) of the Act, which provides:

(3) A landlord who is an individual may 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.

The landlord has made several attempts to increase the rent beyond the sum set out in Part 3 of the Act and Part 4 of the Regulation. When the tenants refused to accept rent increases of \$300.00 and \$200.00 per month the landlord resorted to an attempt to have the tenants leave by telling them cousins were moving in. When that failed the landlord told the tenants the unit would be renovated and her grandparents would visit. The landlord also told the tenants there was no tenancy agreement. When these efforts all failed the landlord issued the two month Notice ending tenancy for landlords' use of the property.

Residential Tenancy Branch policy suggests that 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 tenancy. From the evidence before me I find that the Notice was issued with an ulterior motive in mind. The landlord did not succeed in having the tenants' accept an illegal rent increase. The landlord then engaged in what I find was a campaign of emails, telling the tenants they must vacate for cousins, renovation and visiting grandparents. I find these repeated attempts to obtain possession of the rental unit were calculated and that the landlord was attempting to circumvent the legislation.

When the efforts to have the tenants accept a rent increase or to vacate failed the landlord issued the Notice to end tenancy. I find that the reason given on the Notice is

not supported as a close family does not include grandparents. Further, the landlord had sent the tenants an email stating the grandparents were only visiting.

Therefore, I find that the landlord has issued the Notice for a reason that is not supported by the Act and that the Notice was issued based on an ulterior motive. As a result I find that the two month Notice ending tenancy for landlords' use of the property issued on December 12, 2016 is cancelled. The tenancy will continue until it is ended in accordance with the Act.

I note that unfamiliarity with the law does not provide a defense. The landlord was encouraged to become aware of the rights and responsibilities set out in the legislation. The landlord was also informed that a tenant has a right to quiet enjoyment which could be affected by repeated attempts to have the tenants vacate when the reason is not supported by the legislation and a good faith intention.

As the application has merit I find that the tenants are entitled to deduct the \$100.00 filing fee from the next months' rent due.

Conclusion

The Notice ending tenancy issued on December 12, 2016 is cancelled.

The tenants may deduct the filing fee from the next months' 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: January 24, 2017

Residential Tenancy Branch