



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPL

Introduction

This hearing dealt with the landlords' application pursuant to section 55 of the *Residential Tenancy Act* (the *Act*) for an Order of Possession for the landlords' own use, of the rental unit.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The tenant's agent, RF ('tenant'), appeared and spoke on behalf of the tenant as her agent, and was given full authority to do so. The landlords' property manager, WL ('landlords'), spoke on behalf of the landlords in this hearing, and was given full authority to do so.

The tenant confirmed receipt of the landlords' application for dispute resolution hearing package ("Application"). In accordance with section 89 of the *Act*, I find the tenant duly served with the landlords' Application. No written evidence was submitted by either party.

Preliminary Issue – Tenant's Application to Adjourn Hearing

At the outset of the hearing, the tenant requested an adjournment. The tenant cited the following reason for the adjournment application. A previous hearing was set for 11 a.m. on November 8, 2016 for the tenant's application to cancel the landlords' 2 Month Notice to End Tenancy. The tenant made her application on September 12, 2016, fourteen days after receiving the landlords' 2 Month Notice.

The tenant's application was dismissed with leave to re-apply by the arbitrator as neither party had appeared for the hearing. The tenant disputes the finding by the arbitrator as she testified that she did in fact attend the hearing. The tenant did not provide any evidence to support this, but wanted an adjournment in order to prove that she did in fact attend the hearing on November 8, 2016.

The landlords opposed the tenant's adjournment request, stating that they were never served the notice of dispute resolution for that previous hearing, and as a result did not know to attend. The tenant replied that she did in fact serve the landlords, not once, but twice. The tenant testified that the application was posted on the door, 2 days after filing. No proof of service was provided by the tenant to support this.

In considering this request for an adjournment, I must take into consideration the criteria established in Rule 7.9 of the *Rules*, which includes the following provisions:

Without restricting the authority of the arbitrator to consider the other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:

- *the oral or written submissions of the parties;*
- *the likelihood of the adjournment resulting in a resolution;*
- *the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment: and*
- *whether the adjournment is required to provide a fair opportunity for a party to be heard; and*
- *the possible prejudice to each party.*

Based on the submissions of both parties I find that an adjournment of this matter would provide no benefit to the applicant as the hearing before me pertains to the same 2 Month Notice referred to in the previous dispute. As both parties were prepared to proceed with this hearing, an adjournment is not required to provide a fair opportunity for both parties to be heard. During the hearing, I advised the parties that I was not allowing the tenant's application for adjournment of this hearing.

I find that the landlords have a right to a timely resolution of their application, and I find that an adjournment would only delay the resolution of this matter, which would be prejudicial to the landlords whose 2 Month Notice was served in August 29, 2016 with an effective date of October 21, 2016.

I am not satisfied that an adjournment is necessary, and I advised both parties that I would proceed with the hearing as scheduled.

Issues(s) to be Decided

Are the landlords entitled to an Order of Possession so they may end the tenancy for their own use?

Background and Evidence

The landlords testified that this tenancy began 3 years ago, and it is now a month-to-month tenancy. Monthly rent in the current amount of \$650.00 is payable on the first day each month. The landlords still hold a security deposit of \$325.00. The tenant continues to reside in the rental unit.

The landlords issued the 2 Month Notice, with an effective move-out date of October 31, 2016, for the following reason:

- the landlord intends to convert the rental unit for use by a caretaker, manager, or superintendent of the residential property.

The landlords provided the following background for why they had decided to issue the 2 Month Notice. They testified that the 2 Month Notice was issued as a remedy to change the atmosphere of the apartment building. In an effort to deal with the drug dealing and vandalism in this building, the landlords had decided to turn the tenant's rental suite into a manager's suite so that the landlords could maintain a better presence in the building. This was the landlords' effort to correct the ongoing problems in the building.

The landlords issued the 2 Month Notice to the tenant, which was delivered to her personally on August 29, 2016. The tenant did not have any issue with the service of this 2 Month Notice, and accordingly I find the tenant duly served with the notice in accordance with section 88 of the *Act*.

The landlords testified that they hope this solution would help alleviate the problem within the building. The landlords defined the situation as an "unsavoury atmosphere" which involved illicit activity from the tenant's suite. The landlords testified that this suite was in very rough condition, and a source of many of the problems in the building.

The tenant testified that she did not believe that the landlords gave her the 2 Month Notice in good faith, and believes that this is a "renoviction" situation. She testified that the landlords have done extensive renovations to other units already in the building, and that there were other empty units that the manager could move into.

She questioned the reason why the landlords wanted her suite, especially when she had done her own renovations over the years to her suite. She testified that her rent was only \$650.00 per month, while others in the building were currently renting for \$850.00 per month. The tenant pointed out that the landlords' allegations of illicit activity were not founded, and maintenance that the tenant had requested was never done. She testified that the suite was in disrepair, and she had to do her own repairs.

The landlords indicated during the hearing that they were considering the daughter of the landlord as the intended live in manager. The tenant questioned the landlord's good faith as she said the landlords' story does not stay the same. The tenant submitted that the reason for the 2 Month Notice was to convert the unit into a manager's suite, and now the landlords were testifying that it was now to be occupied by a family member.

Analysis

Subsection 49(6) of the *Act* sets out that a landlord may end a tenancy in respect of a rental unit where the landlord, in good faith, has all the necessary permits and approvals required by law and intends in good faith, to...convert the rental unit for use by a caretaker, manager or superintendent of the residential property".

Residential Tenancy Policy Guideline 2: Good Faith Requirement When Ending a Tenancy 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 that they do not have an ulterior motive for ending the tenancy."

Although the landlords stated that they had issued the 2 Month Notice in order to convert the unit into a manager's suite, I find that the tenant had raised doubt as to the true intent of the landlord in issuing this notice. The tenant raised the question of the landlords' true intentions to end the tenancy. She gave undisputed sworn testimony that there were other vacant suites in this apartment building, and that she was paying substantially less rent. As the tenant raised doubt as to the landlord's true intentions, the burden shifts to the landlord to establish that they do not have any other purpose to ending this tenancy.

The landlords did not dispute the fact that the current tenant is paying substantially less rent than other tenants in the building. In the hearing, the landlords also did not provide sufficient evidence as to why this particular suite was selected when there are other empty suites available in the building.

I find that the landlords have not met their burden of proof to show that they issued the 2 Month Notice in good faith, in order to convert the suite to a manager's suite. I find that the testimony of both parties during the hearing raised questions about the landlords' good faith. The landlords stated that they had issues with the tenant and her alleged "illicit" behavior, clearly indicating in the hearing that they intended to correct the issues with drug dealing and vandalism in the building. Section 49(6) does not provide for illegal activity by the tenant as a reason to end the tenancy by way of a 2 Month Notice.

As the good faith intention of the landlords was called into question, Residential Tenancy Policy Guideline 2 clearly states that "the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy". I find that there was no specific reason provided by the landlords to support why they required this particular suite when undisputed evidence was provided that other vacant suites remain available for this purpose. The landlords also raised concerns about the tenant's behavior, which brings into the question the landlords' true intentions to end this tenancy.

I find that the landlords have not met their burden of proof to show that they do not have any other purpose in ending this tenancy. Based on a balance of probabilities and for the reasons

outlined above, I find that the landlords have not met their onus of proof to show that the landlords, in good faith, require the tenant to vacate this specific rental unit in order to convert it to a manager's suite.

Accordingly, I allow the tenant's application to cancel the 2 Month Notice. The landlord's 2 Month Notice, dated August 29, 2016, is hereby cancelled and of no force and effect. This tenancy continues until it is ended in accordance with the *Act*.

Conclusion

The tenant's application to cancel the landlords' 2 Month Notice is allowed. The landlords' 2 Month Notice, dated August 29, 2016, is cancelled and of no force or effect. This tenancy continues until it is 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: February 2, 2017

Residential Tenancy Branch