



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNL, FF

Introduction

On July 28, 2016, the Tenant submitted an Application for Dispute Resolution requesting the following:

- more time to make an application to cancel a Notice to end tenancy.
- to cancel a 2 Month Notice to End Tenancy for Landlord Use of Property dated December 30, 2016.
- 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 testified that they have exchanged the evidence 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 Issues

On January 16, 2017, The Tenants applied to dispute the 2 Month Notice they received on December 31, 2016. I find that the Tenants' Application was made on time, and the Tenants request for more time to dispute the 2 Month Notice is not needed.

The Tenants provided a monetary order worksheet indicating they are seeking a monetary order in the amount of \$1,000.00. The Tenants' Application does not include a request for a monetary order and does not provide a claim amount.

The Tenants request for monetary compensation is dismissed with leave to reapply.

Issues to be Decided

- Is there cause to end the tenancy based on the 2 Month Notice To End Tenancy For Landlord's Use Of Property dated December 30, 2016?
- Is the Tenant entitled to recover the cost of the filing fee?

Background and Evidence

Both parties testified that the tenancy started in September 2010, and is currently a month to month tenancy. Rent in the amount of \$1,000.00 per month is to be paid on the first day of each month. The Tenant paid a \$500.00 security deposit to the Landlord.

The Landlord testified that he issued the Tenants a 2 Month Notice To End Tenancy For Landlord's Use Of Property dated December 30, 2016 ("the 2 month Notice").

The 2 Month Notice contains one reason for ending the tenancy:

- 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. If a Tenant does not file an Application within 15 days, the Tenant is presumed to accept that the tenancy is ending and must move out of the rental unit by the date set out on page 1 of the Notice.

The burden to proof to end a tenancy rests with the Landlord whom issues the notice.

The Landlords are living apart. The male Landlord K.G. testified that his wife is currently paying a large amount of rent elsewhere. He testified that the Landlords had a discussion in November 2016, about the female Landlord N.G. moving into the rental property.

The female Landlord N.G. testified that she received a rent increase at her rental unit, and her rent is now \$1,200.00 per month. She testified that the Landlords discussed her moving into the rental unit where she will not have to pay any rent. She testified that it was a hard decision to end the tenancy because the Tenant is a friend, but it is a

monetary decision. The Landlord N.G. testified that she has given notice to end her tenancy elsewhere while she waits for the Tenants to move out.

In reply, the Tenant T.A. testified that he understands the Landlord wants to move into the rental unit, but he questioned whether she qualifies because the Landlords are divorced. The Tenants did not provide any supporting evidence on this issue.

The Tenants also submitted that the Landlord is claiming financial hardship but they have 3 other rental properties they are collecting rent from.

The Tenants submitted that they do not buy the reason for ending the tenancy. The Tenants feel the Landlord is ending the tenancy over an argument that ensued regarding traction on the stairs of the Tenants rental unit. The Tenants submitted that Tenant T.A. had slipped on the stairs in October 2016, and the Landlord had installed shingles. The Tenants submitted that the Landlord was resistant to adding more traction to the stairs, and an argument ensued.

The Tenants submit that following the argument, the Landlord issued the 2 Month Notice and stated his wife was moving into the unit. The Tenants submitted that the Landlord never mentioned that his wife was moving into the unit prior to January 13, 2017.

The Tenant submitted that they do not believe the notice was issued for a valid reason.

In response, the Landlord K.G. testified that the Landlords are not divorced. He submits that the Tenants were provided the reason within the 2 Month Notice.

The Landlords testified that the discussions for N.G. to move into the rental unit took place prior to the argument with the Tenants.

The Landlords stated that they were going to end the tenancy anyway, but the argument prompted them to issue the 2 Month Notice sooner. The Landlord submitted that to make it easier for the Tenants, he is providing the Tenants with three months' notice to vacate rather than the required 2 months'.

Residential Tenancy Policy Guideline #2 Good Faith Requirement when Ending a Tenancy provides the following:

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 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.

Analysis

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

I find that there is insufficient evidence from the Tenants to establish that the 2 Month Notice was issued in bad faith. The Landlords were not obligated to discuss their plans with the Tenants prior to issuing the 2 Month Notice. Despite the Landlord's testimony that the argument with the Tenants sped up his decision to issue the 2 Month Notice, this does not prove the Landlords did not discuss the matter prior, and do not have the true intention to occupy the rental unit.

The female Landlord provided affirmed testimony that she has given her Notice elsewhere and is moving into the rental unit.

In addition despite whether or not the Landlord has additional rental units, there is insufficient evidence from the Tenants that the Landlord is not truthful about the financial reasons for issuing the 2 month Notice. The Landlord N.G. testified that she will not have to pay rent.

The Tenants' Application to cancel the 2 month Notice For Landlord Use Of Property dated December 30, 2016, is dismissed.

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 Landlord's 2 Month Notice complies with the requirements of form and content and I find that the Landlord is entitled to an order of possession effective by 1:00 p.m. on March 31, 2017, after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Tenants were not successful with their Application, I decline an order for the Landlord to pay for the cost of the hearing.

Conclusion

The Tenants' application to cancel the 2 Month Notice dated December 30, 2016, is dismissed.

The Landlord is granted an order of possession effective March 31, 2017.

The Tenants request for monetary compensation is dismissed with leave to reapply.

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 14, 2017

Residential Tenancy Branch