



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for landlord's use of property and to recover the filing fee from the landlord for the cost of the application.

The tenant and the landlord attended the hearing, and each gave affirmed testimony and provided evidentiary material in advance of the hearing. The parties were given the opportunity to question each other, and agree that all evidence has been exchanged.

Issue(s) to be Decided

Has the landlord established that the 2 Month Notice to End Tenancy for Landlord's Use of Property was issued in accordance with the *Residential Tenancy Act*, and more specifically with respect to the reason for issuing it?

Background and Evidence

The landlord testified that this tenancy began as a 1 year fixed term commencing on March 1, 2012 and ending on March 1, 2013 thereafter reverting to a month-to-month tenancy, and the tenant still resides in the rental unit. Rent in the amount of \$1,080.00 per month is currently payable on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$600.00 as well as a pet damage deposit in the amount of \$600.00, both of which are still held in trust by the landlord. The rental unit is a condominium style apartment in a strata complex, and a copy of the tenancy agreement has been provided.

The landlord further testified that on January 28, 2017 the tenant was served with a 2 Month Notice to End Tenancy for Landlord's Use of Property by posting it to the door of the rental unit. A copy has been provided and it is dated January 28, 2017 and contains an effective date of vacancy of April 1, 2017. The reason for issuing it states: "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's mother lives in another community and has been driving for therapy to the community of the rental unit, and requires surgery. There is no date yet for the surgery, but she will be moving into the rental unit as soon as the tenant moves out for therapy and treatment in preparation for surgery. Therapy has been on-going and there are no facilities in her community to get the therapy.

The landlord also testified that the tenant's position is that the tenant believes the landlord is selling the property, however, the landlord had an appraisal done on the property for mortgage purposes only. Bank and lenders' letters have been provided, and the landlord testified that the mortgage was renewed for 2 years in September, 2016. Financially, the landlord cannot sell, and now the tenant's mother needs the rental unit. The tenant's mother will not be assuming the mortgage but will take over the landlord's mortgage payment, and it will remain registered to the landlord.

The tenant testified that there is too much ambiguity regarding the date of the surgery, it's not definite. There may be an alternative. The tenant works in the medical field and therapy happens a couple times per week.

The tenant refers to an Affidavit of the landlord's mother provided by the landlord for this hearing, wherein the deponent states that the rental unit will be occupied by her for an undetermined amount of time. Since the future of the landlord's mother is up in the air, the tenant disputes that the landlord has no other alternative but to end the tenancy.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. In this case, the reason for issuing it is in dispute.

The *Act* permits a landlord to issue a 2 Month Notice to End Tenancy for Landlord's Use of Property if the landlord has good faith intent to use the rental unit for the purpose set out in the notice commencing within a reasonable time after the tenancy ends. I accept the testimony of the landlord that the rental unit will be occupied by his mother. If the landlord uses the rental unit for any other purpose, the tenant may apply for monetary compensation, but I find no reason to cancel the notice.

The tenant's application is dismissed. Where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an Order of Possession in favour of the landlord, so long as the notice given is in the approved form. I have reviewed the 2 Month Notice to End Tenancy for Landlord's Use of Property, and I find

that it is in the approved form and contains information required by the *Residential Tenancy Act*. Therefore, I grant an Order of Possession in favour of the landlord effective at 1:00 p.m. on April 1, 2017, the effective date of vacancy contained in the notice.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed in its entirety.

I hereby grant an Order of Possession in favour of the landlord effective at 1:00 p.m. on April 1, 2017.

This order is final and binding and may be enforced.

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: March 16, 2017

Residential Tenancy Branch