



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: OPL, O, FF
Tenant: CNL

Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought an order of possession and the tenant sought to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the landlord; his wife; their legal counsel and the tenant.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for landlord's use of property and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 49, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenant is entitled to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property, pursuant to Section 49 of the *Act*.

Background and Evidence

The tenant submitted two tenancy agreements for the subject unit showing her tenancy began in this rental unit on April 15, 2014. The second agreement was signed by the tenant and then landlord on July 15, 2015 for a month to month tenancy for a monthly rent of \$900.00 due on the 1st of each month with a security deposit of \$450.00 paid.

The landlord submitted into evidence a copy of a 2 Month Notice to End Tenancy for Landlord Use of Property issued by the landlord on February 1, 2017 with an effective vacancy date of April 15, 2017 citing the rental unit will be occupied by the landlord or a close family member.

The landlord submits that they had owned the property next door to the subject property and that in November 2016 they were informed that there was an offer for purchase on the subject property that had been for sale for quite some time.

The landlord confirmed that when the previous owner passed away he had made an offer to the executor of the estate and prior to it being placed on the market for sale but that the offer had been rejected. The landlord testified that the amount asked was

unreasonable and that since that time the estate put the property on the market and there had been no offers until November 2016.

The landlord submitted that it all happened very quickly in that he was contacted by his realtor on what day in November and told there was an offer on the property and if he was interested he needed to submit an offer quickly. The landlord stated he thought about it overnight and he put in a successful offer.

The landlord stated that he was advised by his realtor that because there was another offer it was best to make an offer with no conditions. The landlord also testified that his realtor never informed him he could request vacant possession of the property by having the previous owner issue a 2 Month Notice to End Tenancy for Landlord's Use if the purchaser (landlord) intended to occupy the unit.

The landlord submitted in his written statement and testimony that his intention is and always was to use the property for their own use which included being a place where friends and family could stay when they had large gatherings.

In support of his position the landlord submitted the text of an email he sent to his realtor on January 2, 2017 where he makes a number of statements, including:

- "We have decided to retain the main house for our personal use. This means we will have to give Therese, the tenant, the required 2 months notice to vacate the house, once we have taken possession on February 1."
- "We advised her [the tenant], that, at the time of the offer, we had not yet formulated our plans for the property and subsequently you (Hedi) had no knowledge of any such future plans."

The landlord's written submission indicates that as the closing date approached (February 1, 2017) they became concerned about the tenant's living arrangements after the closing date and they made her some offers.

First, the landlord offered a new tenancy in the "cottage" that was on the property at a rate of \$725.00 plus utilities under a 1 year fixed term tenancy, but the tenant rejected this offer. The landlord submitted then he offered the tenant would be allowed to stay in the rental unit for rent of \$1,100.00 plus 50% of the utilities for a two year period.

The tenant submitted into evidence a copy of an email from the landlord, dated December 21, 2016, confirming these two offers. I note that the offer to the tenant, in the email to remain in the rental unit, does not offer a 2 year term but rather offers that there will be no rent increase for the first two years.

The tenant submitted that when she advised the landlord that he could not increase the rent to \$1,100.00 per month from \$900.00 because of the annual allowable rent increase rate for 2017 she stated that the landlord issued her the 2 Month Notice.

The landlord submitted that the landlord has a true intent of using the rental unit for the stated purpose by using it as a family estate that can be enjoyed by their friends and family. They also submitted that there is no ulterior motive such as getting rid of a troublesome tenant. The parties agreed that they have had a cordial relationship as long as they have known each other as neighbours.

Analysis

Section 49 of the *Act* allows a landlord to end a tenancy if, among other reasons, the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Residential Tenancy Policy Guideline #2 defines “good faith” as an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage.

The Guideline goes on to say that 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 the question as to whether the landlord had a dishonest purpose is raised.

When the good faith intent of the landlord is called into question, the burden rests with the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The Guideline requires the landlord to also establish that they do not have another purpose that negates the honesty of intent or demonstrates they do not have an ulterior motive for ending the tenancy.

While I accept that the landlord has considered purchasing the subject residential property and that the opportunity for the purchase came quickly and unexpectedly to the landlord, I find it is unlikely that the landlord had not determined why he wanted to purchase the property for some time.

As such, if the landlord truly intended to use the property for his own family's use I find the landlord's actions of offering the tenant a new tenancy in the same rental unit for duration of **at least 2 years** is, at the very least, inconsistent with that purpose.

I also find that the specific text from the email from the landlord to his realtor (quoted above) underlines the fact that the landlord had not made up his own mind prior to the purchase of why he was buying the property, for personal use or as a rental property.

Despite the landlord's submissions that he has had a good relationship with the tenant for years and that he is not trying to get rid of a troublesome tenant, I find that landlord only issued the Notice after the tenant informed him that she was not obligated to accept a \$200.00 per month increase, if she wanted to stay.

Based on the above, I find the landlord has failed to establish that this Notice was issued in good faith because the landlord intends to use the property for their own purpose. I find the landlord has issued this Notice, at least in part, because the tenant has invoked her rights under the *Act*. As a result, I find the landlord does have another purpose to end the tenancy the negates the honesty of the intent.

Conclusion

Therefore, I dismiss the landlord's Application for Dispute Resolution in its entirety without leave to reapply.

I order the 2 Month Notice to End Tenancy for Landlord's Use issued by the landlord on February 1, 2017 is cancelled and the tenancy remains in effect until 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: March 08, 2017

Residential Tenancy Branch