



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF

Introduction

This hearing was convened by way of conference call in response to the tenant's application to dispute a Two Month Notice to End Tenancy for landlord's use of the property and to recover the filing fee from the landlord for the cost of this application.

The tenant and an agent for the landlord attended the conference call hearing, and were given the opportunity to be heard, to present evidence and to make submissions under oath. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties in attendance confirmed receipt of evidence. 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.

Issue(s) to be Decided

Is the tenant entitled to an Order cancelling the Two Month Notice to End Tenancy?

Background and Evidence

The parties agreed that this tenancy started with the tenant's former landlords on April 01, 2009. A new tenancy was agreement was signed on November 23 and 24, 2016 with those landlords. This landlord became the owner/landlord of the property in December, 2016. Rent for this unit is \$1,100.00 per month due on the 1st of each month.

The parties agreed that the tenant was served a Two Month Notice to End Tenancy for landlord's use of the property (the Notice) in person on February 21, 2017. A copy of the

Notice has been provided in evidence. The Notice was issued on February 16, 2017 and has an effective date of February 28, 2017. The reason provided on the Notice is that the landlord has all necessary permits and approvals required by law to demolish the rental unit, or renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

The landlord's agent testified that they have tried to communicate with the tenant unsuccessfully after the landlord hired the landlord's agents to deal with this matter. During conversations with the tenant they indicated that they would be withdrawing the Notice as they do not agree that the tenant is entitled to a free month's rent. It was also indicated to the tenant that they would be serving her with a One Month Notice.

The landlord's agent testified that if the tenant agrees to vacate the rental unit at the end of April, 2017 then the landlord will not require rent from the tenant for April, 2017. The landlord's agent testified that the landlord does have all necessary permits in place to renovate this unit.

A discussion took place in which I advised the landlord's agent that a Notice to End Tenancy cannot be unilaterally withdrawn without the consent of the party to whom it is given and that the giving of a second Notice to End Tenancy does not operate as a waiver of a Notice already given.

The tenant has applied to cancel the Notice but requested the opportunity to give her testimony concerning this. The tenant testified that the landlord had asked the tenant for more rent. The tenant at first refused and so the landlord served the tenant with the first Two Month Notice to End Tenancy on December 17, 2016 and stated that his mother would be moving into the unit. The tenant testified that she determined that the landlord's mother was not going to be moving in and tried to negotiate with the landlord about a rent increase to protect her tenancy. The landlord then served this Two Month Notice upon the tenant saying he had permits in place.

The tenant testified that at the time the Notice was served the landlord did not have permits in place and only obtained those after the Notice had been served.

The tenant testified that she seeks to have this Notice cancelled and has already filed an application to dispute the One Month Notice served upon her on March 16 when it was left in her mail slot. It should be noted here that the parties have another hearing scheduled to be heard on May 01, 2017.

At this point the landlord's agent became confrontational and accused the Arbitrator of always being confrontational. I explained that unless the permits were in place at the time the Notice was served upon the tenant then I would cancel the Notice. The landlord's agent stated that this is what the landlord wants and stated that I had already said the Notice could not be cancelled without the parties consent. I explained to the landlord's agent that an Arbitrator can cancel the Notice at a hearing. The landlord's agent left the hearing before the hearing had concluded. The hearing continued for another few minutes in the landlord's agent's absence.

Analysis

After careful consideration of the testimony and documentary evidence before me I find as follows:

I am satisfied from the evidence before me that at the time the Two Month Notice was served upon the tenant the landlord did not have all necessary permits and approvals required by law in place. The landlord's agent offered up no evidence to show that the renovations require the rental unit to be vacant and I can only assume this was because at this point the landlord wanted to withdraw the Notice as the landlord's agent testified that they did not feel the tenant should get a free month's rent.

For the parties reference I refer the parties to the Residential Tenancy Policy Guidelines #11 which provides guidance on the amendment and withdrawal of Notices. I strongly suggest the landlord's agent familiarizes himself with this guideline so they can better advise a landlord of the procedures to take if they want to withdraw a Notice to End

Tenancy after one has been served upon a tenant or if any subsequent Notices are served.

The parties have another hearing pending for the tenant's application to cancel the One Month Notice to End Tenancy and that matter will be dealt with at that hearing.

The tenant's application is upheld and the tenancy will continue until legally ended.

The tenant is entitled to recover her filing fee of **\$100.00** from the landlord pursuant to s. 72(1) of the *Act* and may withhold that amount from her next rent payment when it is due and payable.

Conclusion

The tenant's application is allowed. The Two Month Notice to End Tenancy for landlord's use of the property dated February 21, 2017 is cancelled and the tenancy will continue.

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 29, 2017

Residential Tenancy Branch