



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF, MNDC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord was represented by his son. The landlord's agent acknowledged receipt of the tenants' evidence. The landlord did not submit any documentary evidence for this hearing.

Preliminary Issue

RTB Rule of Procedure 2.3 states that if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so; the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply.

I advised both parties that the primary and central issue at this hearing was whether this tenancy was continuing, this was explained in great detail and several times to the parties. The remaining portion of the tenant's Application is unrelated to the Application to cancel the 2 Month Notice. I advised both parties that the remaining portion of the

tenant's Application; the tenants request for a monetary order was dismissed with leave to reapply. Both parties indicated that they understood.

Issues to be Decided

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The landlords' agent gave the following testimony. The tenancy began on or about August 1, 2016. Rent in the amount of \$1100.00 is payable in advance on the first day of each month, no security deposit was required. The landlord issued a Two Month Notice to End Tenancy for Landlords Use of Property on February 26, 2017 with an effective date of May 1, 2017, on the basis that the landlords son wishes to move into this unit and wants the tenant to move out. The agent testified that his brother is attending school in the area and wishes to live in the home as it would be more convenient for him. The agent testified that the tenants' allegation is without merit. The agent testified that there was never an arrangement for his brother to live with the tenant. The agent testified that no one other than his brother will be moving into the home. The agent testified that the tenant has made numerous allegations that are untrue. The agent testified that they seek an order of possession.

The tenant gave the following testimony. The tenant testified that she feels the notice is "unfair" and doesn't think the landlord is acting in good faith. The tenant testified that the agreement was to have the landlords son move in with her and to pay \$500.00 of the rent, thus reducing the tenant's rent to \$600.00. The tenant testified that she only moved onto this property because of that reason and was promised she could live there "forever". The tenant testified that the landlords are planning on moving in a couple who was living on the property in a "fifth wheel". The tenant testified that she is a homeowner herself and as a result of this notice she's had to give her tenants notice to move out so she can move back into her home. The tenant testified that it's especially hard for people with animals to move. The tenant testified that she thinks it's very clear that the landlord acted in bad faith and that the notice should be cancelled and have the tenancy continue.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

The tenant has called into question whether the landlord has issued the notice in good faith. Residential Tenancy Policy Guideline 2 addresses the "good faith requirement" as follows.

Good faith is 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.

A claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End the Tenancy. This might be documented through:

a Notice to End Tenancy at another rental unit;

an agreement for sale and the purchaser's written request for the seller to issue a Notice to End Tenancy; or

a local government document allowing a change to the rental unit (e.g., building permit) and a contract for the work.

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 they do not have an ulterior motive for ending the tenancy.

The landlords' agent gave clear concise and credible testimony. He provided details as to the logistical and financial benefits for his brother to move close to his educational institution. Based on the above, and on a balance of probabilities, I find that the landlord has issued the notice in good faith. As a result, the landlord is entitled to an order of possession pursuant to Section 55 of the Act. The tenancy is terminated.

The Notice remains in full effect and force. The tenant requested an extension to the effective date due to the logistical challenges of moving numerous animals. Based on the information provided I am satisfied that under these unique and extraordinary circumstances, that the order of possession take effect at 1:00 p.m. on May 31, 2017.

Conclusion

The tenancy is terminated. The landlord is granted an order of possession. The tenants' monetary claim 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: April 12, 2017

Residential Tenancy Branch