



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Codes CNL, LAT, OLC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice"), issued on March 29, 2017, to allow the tenant to change the locks to the rental unit, to have the landlord comply with the Act and to recover the filing fee from the landlord.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In case, the tenant has indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice.

I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenant's request to set aside the Notice. The balance of the tenant's application is dismissed, with leave to reapply.

In a case where a tenant has applied to cancel a notice to end tenancy, the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving the reasons given on the notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Should the Notice be cancelled?

Background and Evidence

The tenancy began in January 2012.

The parties agreed that the Notice was served on the tenant with an effective vacancy date of May 31, 2017.

The reason stated in the Notice was:

- The rental unit will be occupied by the landlord's close family member (parent, spouse, or child; or the parent or child of the individual's spouse)

The landlord testified that they have been living with a friend for the last year and they want to move into the rental unit. The landlord stated that this would also allow them time to work on the property, so they can get the property ready to sell in the future.

The tenant testified that they question the "good faith" of the landlord. The tenant stated that on March 27, 2017, the landlord had a real estate agent attend the property as the landlord wanted to sell the property.

The tenant testified that on April 13, 2017, the landlord left them a voice mail message that indicated the purpose was to sell the home as soon as possible.

The landlord responded that after the real estate agent attended on March 27, 2017, they had a lot to think about, regarding whether to list the property. The landlord stated that the tenant was informed that they would likely see a for sale sign sometime in the summer. However, after further consideration decided to move into the premises and issued the Notice.

The landlord responded that they were in the hospital on April 13, 2017, when they contacted the tenant. The landlord stated that they were heavily drug and they were in a panic state.

The landlord responded that they plan to live in the rental unit and get it ready to sell for some future date. The landlord indicated that if the Notice is upheld they are agreeable to extend the effective date to June 30, 2017.

Analysis

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

When a tenant has filed to cancel a notice to end tenancy for landlord's use and calls into question the "good faith" requirement, the onus lies on the landlord to prove the two part test as follows:

1. The landlord must truly intend to use the premises for the purposes stated on the notice to end tenancy; and
2. The landlord must not have an ulterior motive as the primary motive for seeking to have the tenant vacate the rental unit.

I accept the landlord is likely to sell the property at some point in the future; however, the landlord is currently living at friends and wants to move into the premises, I find that reasonable under those circumstances. Further, the landlord wants to be able to prepare the property for sale, I find that reasonable.

I accept the landlord's evidence that they want to move in to the property. While the landlord may intend to sell the property later, I do not find that this is the primary motive for ending the tenancy. Since the landlord had originally planned to list the property for sale while the tenant was living there and it was only after the real estate visit on March 29, 2017, that the landlord's plans changed.

Therefore, I find the landlord has proven the reason stated in the Notice, I find the Notice is valid. Therefore, I dismiss the tenant's application to cancel the Notice.

The landlord at the hearing stated that they would be agreeable to extend the effective date to June 30, 2017.

As the tenant's application is dismissed, I find the landlord is entitled to an order of possession, pursuant to section 55 of the Act.

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

As I have dismissed the tenant's application, I find that the landlord is entitled to an order of possession effective **June 30, 2017 at 1:00 P.M.**

As the tenant has not been successful with their application, I find the tenant is not entitled to recover the filing fee from the landlord.

Conclusion

The tenant's application to cancel the Notice is dismissed. The landlord is granted an order of possession.

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: May 30, 2017

Residential Tenancy Branch