



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, 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; for an order that the landlord comply with the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

The landlord and the tenant attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and give submissions. No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided for this hearing has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established that the Two Month Notice to End Tenancy for Landlord's Use of Property was issued in accordance with the *Residential Tenancy Act*?
- Should the notice to end the tenancy be cancelled?
- Should the landlord be ordered to comply with the *Act*, regulation or tenancy agreement, and specifically with respect to issuing notices to end the tenancy and complying with the Addendum to the tenancy agreement?

Background and Evidence

The landlord testified that this month-to-month tenancy began on May 1, 2014 and the tenant still resides in the rental unit. The rental unit is a manufactured home located in a manufactured home park and the tenant pays the pad rental only, directly to the manufactured home park.

The landlord was not the landlord at the time the tenancy agreement was entered into but purchased the manufactured home in January, 2017. The landlord named in the tenancy agreement is her spouse.

Rent in the amount of \$400.00 per month was payable on the 1st day of each month, but has been increased, and there are no rental arrears.

On May 8, 2017 the landlord caused the tenant to be served with a Two Month Notice to End Tenancy for Landlord's Use of Property, a copy of which has been provided for this hearing. It is dated May 8, 2017 and contains an effective date of vacancy of July 31, 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 testified that her daughter personally served the notice to the tenant, and the landlord's daughter will be moving into the rental unit.

The landlord further testified that the landlord is presently living with her mother who has been diagnosed with cancer. The landlord's daughter periodically lives with her sister but doesn't have a bedroom there, is struggling, and the landlord needs the rental unit for her daughter to reside in.

The tenant testified that she pays rent in the amount of \$431.00 per month directly to the manufactured home park, and there are no arrears.

The tenant further testified that she has not received any notice as to the sale of the manufactured home or who the landlord is, and there is no new tenancy agreement. The tenant has only met the landlord who issued the notice to end the tenancy on one occasion, and she was not the landlord at that time.

The tenant has provided a copy of a tenancy agreement entered into between a landlord and the tenant on April 23, 2014 as well as an Addendum. The tenant testified that the landlord named in the tenancy agreement was an agent for the owner, and no one told the tenant that it had been sold. The tenant conducted a search and discovered that the landlord who issued the Two Month Notice to End Tenancy for Landlord's Use of Property purchased the manufactured home, and it changed hands twice in January, 2017.

The Addendum specifies that the tenant will pay rent in the amount of \$400.00 per month, "... until the rental unit purchase agreement and clear deed to rental unit is completed and transferred into tenant's name." Despite asking numerous times, neither the previous owner, nor the current owner, nor the agent who entered into the tenancy agreement has provided the purchase agreement.

The tenant had previously been to a dispute resolution hearing with the previous owner and the agent who entered into the tenancy agreement. A copy of the resulting Decision has been provided for this hearing, which ordered the landlords to refrain from issuing notices to end the tenancy that do not comply with the *Act*, and that the landlords comply with the terms of the tenancy agreement. The Decision also specifies a finding that the Addendum is unconscionable because it is made solely for the purpose of purchasing the manufactured home and makes no reference to what happens if the tenant never purchases it.

The tenant seeks an order cancelling the Two Month Notice to End Tenancy for Landlord's Use of Property and an order that the landlord comply with the tenancy agreement.

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 the case of a Two Month Notice to End Tenancy for Landlord's Use of Property, the landlord must also establish good faith intent to use the rental unit for the purpose contained in the notice.

I have reviewed the notice, and I find that it is in the approved form and contains information required by the *Act*.

The tenant didn't lead any evidence that might suggest that the landlord does not have good faith intent to provide the rental unit to her daughter. The tenant's suggestion is that the landlord ought to have informed the tenant of who the landlord is. The *Residential Tenancy Act* requires a landlord to provide such information for emergency purposes, but I don't see that as being relevant to the dispute. I find that the landlord has established good faith intent.

The tenant also suggests that the Addendum to the tenancy agreement provides for exclusive occupancy until the parties enter into a purchase agreement, and the owner(s) or landlord(s) have continuously refused to enter into that purchase agreement, despite numerous attempts by the tenant, and the landlord(s) is/are in breach of the agreement. However, that is not an issue that can be dealt with under the *Residential Tenancy Act*. The *Act* specifies how a tenancy ends which includes a landlord ending a tenancy for few reasons, one of which is for the landlord's use of the property for the landlord or the landlord's spouse, child or parent.

I have evidentiary material before me that the landlord who issued the notice to end the tenancy is the owner of the rental unit, and she testified that the person named as landlord in the tenancy agreement is her husband. Further, the *Act* also defines a landlord as:

"landlord", in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement, or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
 - (i) is entitled to possession of the rental unit, and

- (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this;

In the circumstances, I find no reason in law to cancel the notice, and the tenant's application is dismissed.

The *Residential Tenancy Act* also states that 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. Having found that it is, I grant an Order of Possession in favour of the landlord effective at 1:00 p.m. on July 31, 2017, the effective date contained in the notice.

Since the tenancy is ending, the tenant's application for an order that the landlord comply with the *Act* or the tenancy agreement is also dismissed.

Since the tenant has not been successful with the application the tenant is not entitled to recovery of the filing fee.

Conclusion

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

I hereby grant an Order of Possession in favour of the landlord effective July 31, 2017 at 1:00 p.m. and the tenancy will end at that time.

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: June 22, 2017

Residential Tenancy Branch