



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

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

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49.

Both parties attended the hearing via conference call and provided affirmed testimony. The tenant stated that the landlord was served with the notice of hearing package on May 2, 2017 in person. The landlord confirmed service as claimed by the tenant. Both parties also confirmed that the only documentary evidence submitted was by the tenant consisting of a copy of the 2 Month Notice dated April 26, 2017. As both parties have attended and have confirmed receipt of the notice of hearing package, I am satisfied that both parties have been sufficiently served as per section 90 of the Act.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 2 Month Notice?

Background and Evidence

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 / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The applicant seeks an order cancelling the 2 Month Notice dated April 26, 2017.

Both parties confirmed that on April 26, 2017, the landlord served the tenant with the 2 Month Notice. The 2 Month Notice sets out an effective end of tenancy date of June 30, 2017 and that it was being given as:

The landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant.

The applicant provided written submissions stating,

I believe I'm being falsely evicted for renovation excuse. I've lived there for 6 years with no issues. I suspect the eviction is to increase the rent to new tenants.[reproduced as written]

The landlord provided affirmed testimony that there are plumbing problems throughout the building requiring the vacant possession of 7 rental units. The landlord stated that he was advised by his plumbing contractor that the floor in each of the 7 rental units need to be removed to replace/repair the plumbing.

The tenant provided affirmed testimony that he has been residing at the rental premises for 6 years and that he is not aware of any plumbing issues for his rental unit or the building.

Analysis

Section 49 of the Act sets out that a landlord may end a tenancy in respect of a rental unit where the landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant.

In this case, the landlord has provided affirmed testimony that 7 of the rental units are required to be vacant for plumbing issues under the floor. The tenant has disputed the landlord's claims stating that there were no plumbing issues.

Where a tenant applies to dispute a 2 Month Notice, the onus is on the landlord to prove, on a balance of probabilities, the reasons on which the 2 Month Notice is based. The landlord did not submit sufficient evidence and did not meet his onus of proof.

Further 2 Month Notices have a good faith requirement. *Residential Tenancy Policy Guideline* "2. Good Faith Requirement when Ending a Tenancy" helps explain this "good faith" requirement:

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...

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 2 Month Notice is set aside and is of no force and effect. This tenancy will continue until ended in accordance with the Act.

Conclusion

The tenant's application to cancel the 2 Month Notice is granted.

The 2 Month Notice dated April 26, 2017 is set aside. The tenancy shall 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: June 06, 2017

Residential Tenancy Branch