



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNL FF

Introduction

This is an application brought by the tenant requesting an order canceling a Notice to End Tenancy that was given for landlord use.

A substantial amount of documentary evidence, audio evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All parties were affirmed.

Issue(s) to be Decided

The issue I dealt with is whether or not a Notice to End Tenancy for landlord use has been given in good faith.

Background and Evidence

This tenancy began on June 1, 2007 and the present monthly rent is \$588.09.

On April 28, 2017 the landlord personally served the tenant with a two month Notice to End Tenancy for family use.

The applicant testified that she believes this Notice to End Tenancy has been given in bad faith, stating that the landlord threatened to use family to move her out of the rental unit when she complained about an illegal rent increase and filed for dispute resolution.

The applicant further stated that she has provided audio recordings of her contact with the landlord, in which the landlord clearly makes the threat to move her out of the rental unit.

The applicant stated that she therefore believes that the landlords present excuse has only been made up to move her out of the rental unit, and further states that the landlord doesn't really even live in the rental unit she spends most of her time in Sandpoint Idaho.

The applicant is therefore requesting that this Notice to End Tenancy be canceled and that her tenancy be allowed to continue.

The agent for the landlord testified that this Notice to End Tenancy has not been given in bad faith, as their mother has been in hospital and then in long-term care, and will now be returning to Nelson where she will need further assistance from family members, and they therefore need this rental unit for the family members to stay in as it is directly across from their mothers unit.

The agent for the landlord further stated that their mother had been not well and she did not speak as she should have when the recordings were made, however this is not the reason for the eviction.

The agent further testified that the requests for repairs or the request for return of overpayment of rent have no bearing on this Notice to End Tenancy, as they were quite minor. The amount of rent was less than \$500.00, and repairs are done on a normal basis by their maintenance person. This notice has been given because they require the unit to be able to properly care for their mother, who does live in Nelson as her primary residence, although she does visit Sandpoint Idaho.

Analysis

It is my finding that this Notice to End Tenancy has not been given in good faith and although the parties may fully intend to use the rental unit for family members, I believe the main intention of this notice was to remove the tenant for filing a complaint.

I have listen to the recorded evidence provided by the tenant and in those recordings the landlord frequently tells the tenant to vacate the rental unit, even threatens to get aggressive with the tenant if the tenant pursues her arbitration, and clearly threatens to end the tenancy using the Residential Tenancy Act, which she did shortly thereafter. The landlord's agent has argued that they are going to use his rental unit to take care of their mother, however I do not believe that is the primary objective of this notice, and that the primary objective of this notice has been to get rid of a tenant that the landlord finds annoying.

Residential Tenancy Policy Guideline number 2 states:

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.

It is my finding that the landlord clearly had an ulterior motive in giving the notice to end the tenancy and therefore, pursuant to section 62 of the Residential Tenancy Act, this Notice to End Tenancy will be canceled and this tenancy continues.

I also allow the applicants request for recovery of the \$100.00 filing fee.

Conclusion

As stated above the two month Notice to End Tenancy given for landlord use is hereby canceled and this tenancy continues.

I have also allow the applicants request for the recovery of the \$100.00 filing fee, and I therefore order that the applicant may make a one-time \$100.00 deduction from future rent payable to the landlords.

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 19, 2017

Residential Tenancy Branch