



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PAUL BAL GROUP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MT, CNL

Introduction

On April 18, 2017 a hearing was conducted to resolve a dispute between these two parties. The tenant failed to attend and the landlord was granted an order of possession. The tenant applied for a review of this decision. The arbitrator suspended the order of possession pending a review hearing for the tenant's application.

This is a review hearing granted for the tenant's application pursuant to the *Residential Tenancy Act* (the Act) for:

- more time to make an application to cancel the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 66;
- cancellation of the landlord's 2 Month Notice pursuant to section 49.

The tenant attended the hearing via conference call and provided undisputed affirmed testimony. The landlord did not attend or submit any documentary evidence. The tenant provided affirmed testimony that she personally served the landlord with the notice of hearing package and a copy of the Review Decision on May 12, 2017. I accept the undisputed affirmed evidence of the tenant and find that the landlord was properly served as per sections 88 and 89 of the Act.

Preliminary Issue

At the outset the tenant stated that she had made an error in selecting the request on her application for more time (MT) to be allowed to make an application for dispute to cancel the notice to end tenancy. A review of the application and testimony from the tenant shows that she received the 2 Month Notice dated February 28, 2017 on March 3, 2017. The tenant applied for dispute on March 14, 2017. The tenant has the right to file for dispute of this type of notice within 15 days after she receives it. In this case, it is clear that more time is not required as the tenant has filed for dispute within the allowed

timeframe. As such, no further action is required for this portion of the tenant's application.

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 tenant provided affirmed testimony that she received the 2 Month Notice dated February 28, 2017 on March 3, 2017. The 2 Month Notice sets out an effective end of tenancy date of April 30, 2017 and the reason it was given as:

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 tenant provided both written and direct evidence that she does not believe the landlord or a close family member will occupy the rental premises. The tenant stated that the landlord is a realtor who lives in a big new house. The tenant stated that the rental property is an investment property.

Analysis

Section 49 of the Act sets out that a landlord may end a tenancy in respect of a rental unit where the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

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 any evidence or appear for this hearing. The landlord 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 for more time was cancelled by the tenant.
The tenant's application to cancel the 2 Month Notice is granted.

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 09, 2017

Residential Tenancy Branch