



Dispute Resolution Services

Page: 1

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 a 2 Month Notice to End Tenancy For Landlord's Use of Rental Property, pursuant to section 49;

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. The landlord acknowledged service of the tenant's application and evidence package. The landlord did not submit any documentary evidence in response to the application.

Issues

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Background & Evidence

The rental unit is one half of a duplex. The tenancy began on May 1, 2015. The current monthly rent is \$550.00 and is payable on the 1st day of each month. The current landlord took ownership of the rental property approximately 4 months ago.

The landlord served the tenant with a 2 Month Notice on June 1, 2017.

The landlord testified that the new ownership has decided to renovate the rental property by converting the duplex into one larger unit. The landlord testified the renovations will begin as soon as they obtain possession of the unit. The landlord testified the rental unit needs attention particularly with respect to mould in the unit. The

landlord further testified that it is only a matter of time before the rental unit is demolished, perhaps as early as the next few months as soon as they obtain permits.

The tenant is disputing the 2 Month Notice on the grounds that it was not issued in good faith. The tenant submits that the landlord attempted to negotiate a rent increase higher than the annual increase permitted under the Act. The tenant argues the landlord has not provided any evidence on the extent of the renovations required or any permits for converting the duplex into one single unit or for demolishing the unit. The tenant further argues that the landlord has not provided any evidence of the alleged mould.

The landlord did not deny trying to negotiate a rent increase but rather stated the landlord has since changed its mind and decided to renovate instead.

Analysis

Section 49 of the Act contains provisions by which a landlord may end a tenancy for landlord's use of property by giving notice to end tenancy. Pursuant to section 49(8) of the Act, a tenant may dispute a 2 Month Notice by making an application for dispute resolution within fifteen days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the 2 Month Notice.

Further, 2 Month Notices have a good faith requirement. *Residential Tenancy Policy Guideline #2* "Good Faith Requirement when Ending a Tenancy" provides the following guidance:

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 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.

I find that there is sufficient evidence of an ulterior motive to end the tenancy on the part of the landlord. The landlord did not dispute initially attempting to negotiate a rent increase. Although the landlord may very well have changed its mind and decided it was more beneficial to renovate the property, I find the landlord has provided insufficient

evidence in support of carrying out the proposed renovation. The landlord provided little details of the extent of the planned renovations and whether or not any permits are required for such renovation work, specifically converting a duplex into one larger unit. Further, the landlord's own testimony was contradictory in that he stated it is only a matter of time before the landlord demolishes the rental unit. I find it is not likely that the landlord would take on such extensive renovation work only to demolish the unit a few months later.

Conclusion

I allow the tenant's application to cancel the landlord's 2 Month Notice, dated June 1, 2017, which is hereby cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

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: July 28, 2017

Residential Tenancy Branch