



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF

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 Cause (the 2 Month Notice) pursuant to section 49; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Each party acknowledged the receipt of the other party's documentary evidence.

Issues to be Decided

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

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The landlord gave the following testimony. The tenancy is based on a verbal agreement. The tenancy began on or about October 1, 2013. Rent in the amount of \$550.00 is payable in advance on the first day of each month, no security deposit was required. The landlord issued a Two Month Notice to End Tenancy for Landlords Use of Property on May 29, 2017 with an effective date of July 31, 2017. The landlord testified that she wishes to have her elderly father move in to the unit so that he can be nearby for her to care for him. The landlord testified that she did not issue the notice in bad faith. The landlord testified that a notice of rent increase wasn't given as alleged by the

tenant. The landlord testified that the tenant has made numerous allegations that are untrue. The landlord testified that they seek an order of possession.

The tenant gave the following testimony. The tenant testified that the landlord verbally requested a \$400.00 per month increase on May 23, 2017. The tenant testified that when she didn't agree to the increase, the landlord issued a notice to end tenancy six days later. The tenant testified that the landlord is clearly acting in bad faith and that the notice should be cancelled.

Analysis

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 arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

The tenant has called into question whether the landlord has issued the notice in good faith. Residential Tenancy Policy Guideline 2 addresses the "good faith requirement" as follows.

Good faith is an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage.

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. This might be documented through:

*a Notice to End Tenancy at another rental unit;
an agreement for sale and the purchaser's written request for the seller to issue a Notice to End Tenancy; or a local government document allowing a change to the rental unit (e.g., building permit) and a contract for the work.*

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 landlord gave clear concise and credible testimony. She provided details as to the logistical benefits for her father to move in with her. In addition, the landlord argues that the tenant had no documentary evidence to support the alleged rent increase. Based on the above, and on a balance of probabilities, I find that the landlord has issued the notice in good faith. As a result, the landlord is entitled to an order of possession pursuant to Section 55 of the Act. The tenancy is terminated.

The 2 Month Notice dated May 29, 2017 with an effective date of July 31, 2017 remains in full effect and force.

Conclusion

The tenancy is terminated. The landlord is granted an order of possession.

The tenants' application is dismissed in its entirety.

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 10, 2017

Residential Tenancy Branch