



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, CNL, FF

Introduction

This hearing dealt with cross applications. The tenants applied to cancel a *2 Month Notice to End Tenancy for Landlord's Use of Property* ("2 Month Notice"). The landlord applied for an Order of Possession for landlord's use of property. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and Procedural Matters

The female landlord had filed the Landlord's Application for Dispute Resolution naming both her and as her co-landlord, who are also recently separated spouses, as applicants. The male landlord appeared at the hearing and testified that he does not want the tenancy to end or the 2 Month Notice to be upheld and he stated that he was appearing on behalf of the tenants. I amended the landlord's Application for Dispute Resolution by excluding the male landlord as an applicant since he is not seeking an Order of Possession against the tenants. I have also recorded the male landlord as appearing on behalf of the tenants on the cover page of this decision.

The male landlord and the tenants confirmed that a new tenancy agreement was executed on July 1, 2017 and that the landlord signed a letter on July 4, 2017 to confirm that he did not agree with the female landlord's issuance of the 2 Month Notice; that he wants the tenants to remain on the property as tenants; and, that he has signed a new tenancy agreement with them. The tenants stated that they intended to submit this documentation to the Residential Tenancy Branch as evidence but they were advised that they were past their deadline for submitting evidence. The female landlord stated that she had not seen or heard of this documentation or agreement before this hearing.

I had the tenants read from the documentation during the hearing and the male landlord confirmed that the content read by the tenants was accurate.

Both of landlords confirmed to me that they are both currently listed as being the registered owners of the subject property and that the property is part of a division of assets proceeding that is about to be filed in the Supreme Court in the very near future.

Under section 58(2) of the Act, I, as a delegate of the Director of the Residential Tenancy Branch, must resolve the disputes identified in the Applications for Dispute Resolution that have been filed. There are some exceptions to this obligation, including disputes that are "linked substantially to a matter that is before the Supreme Court". Since the residential property occupied by the tenants is not the subject of a matter that is currently before the Supreme Court I find the exception does not apply at this point in time and I must resolve the Applications that have been filed.

Issue(s) to be Decided

Should the 2 Month Notice be upheld and an Order of Possession provided to the landlord or the 2 Month Notice been withdrawn?

Background and Evidence

The tenants moved into the rental unit in September 2014 and have been paying rent of \$1,400.00 on the first day of every month. In April 2017 the co-landlords ceased living together and on May 1, 2017 the female landlord personally served the tenants with a 2 Month Notice to End tenancy for Landlord's Use of Property ("2 Month Notice") that has a stated effective date of August 31, 2017. The reason for ending the tenancy, as indicated on the 2 Month Notice, is that the rental unit will be occupied by the landlord or the landlord's close family member.

The female landlord stated that it was and is still her intention to move into the rental unit with her four children. The female landlord explained that after leaving the home she shared with her husband she moved into a recreational vehicle for a period of time before securing a small suite on a short term basis that has an expiry date of August 31, 2017. The small suite she is renting is inadequate to have her children and pet dog live with her and she requires possession of the rental unit.

Upon receiving the 2 Month Notice the tenants informed the male landlord that they had received an eviction notice from the female landlord. The male landlord conveyed to

the tenants that he did not want them to leave. The tenants do not want to end the tenancy either. The tenants filed to dispute the 2 Month notice on May 10, 2017.

Both the tenants and the male landlord testified that on July 1, 2017 the male landlord and the tenants executed a new tenancy agreement for the subject property that is for a fixed term of six months and requires the tenants to pay rent of \$1,400.00 per month. The male landlord also signed a letter on July 4, 2017 confirming that he did not support the issuance of the 2 Month Notice; that he wants the tenants to stay; and, that he signed a new tenancy agreement with them.

The male landlord testified that this is a marital dispute that should be resolved in the Supreme Court and the tenants should not be caught in the middle of it. I heard consistent testimony from both of the landlords that they are in the process of preparing submissions with respect to division of marital property in Supreme Court through their respective lawyers.

I heard that the tenants paid the rent for July 2017 by making a deposit into the same bank account they have always used to pay their rent.

Analysis

Residential Tenancy Branch Policy Guideline 11: *Amendment and Withdrawal of Notices* provides policy statements and information with respect to amending and withdrawing a Notice to End Tenancy. The policy guideline provides, in part:

A landlord or tenant cannot unilaterally withdraw a Notice to End Tenancy. With the consent of the party to whom it is given, but only with his or her consent, a Notice to End Tenancy may be withdrawn or abandoned prior to its effective date. A Notice to End Tenancy can be waived (i.e. withdrawn or abandoned), and a new or continuing tenancy created, only by the express or implied consent of both parties.

Both of the landlords appearing before me affirmed that they are both registered owners of the property. Accordingly, I am satisfied that they both meet the definition of landlord as provided under section 1 of the Residential Tenancy Act. As such, I find they are co-landlords and each of them has the right to exercise rights and duties of a landlord and as co-landlords, one landlord has the authority and the ability to withdraw a Notice to End Tenancy even if the Notice to End Tenancy was issued by another landlord.

In this case, the female landlord seeks to end the tenancy so that she may have occupation of the rental unit for her own living accommodation; however, the male

landlord has withdrawn the 2 Month Notice and he has created a new tenancy agreement with the tenants with their consent and agreement before the effective date of the 2 Month Notice. Therefore, I find the 2 Month Notice served upon the tenants is no longer of any force or effect and I dismiss the landlord's request for an Order of Possession.

I further order the landlords to compensate the tenants for the \$100.00 filing fee they paid for their Application. The tenants are authorized to deduct \$100.00 from a subsequent month's rent to satisfy this award.

Conclusion

The 2 Month notice to End Tenancy was withdrawn by mutual consent and the 2 Month Notice is no longer of any force or effect. The landlord's application for an Order of Possession is dismissed. The tenants are authorized to deduct \$100.00 from a subsequent month's rent to recover the filing fee they paid for their application.

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 11, 2017

Residential Tenancy Branch