



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the *Act*) for cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice"), pursuant to section 49.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The landlord's agent, BL ('landlord'), appeared and spoke on behalf of the landlord, and had full authority to do so.

The landlords confirmed receipt of the tenants' application for dispute resolution ('application'). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the tenants' application. As both parties confirmed receipt of each other's evidentiary materials, I find that these documents were duly served in accordance with section 88 of the *Act*.

As the tenants confirmed receipt of the 2 Month Notice on May 31, 2017, I find that this document was duly served to the tenants in accordance with section 88 of the *Act*.

Issues(s) to be Decided

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

Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on June 1, 2014 with monthly rent currently set at \$1,328.00, payable on the first day each month. The landlord still holds a security deposit of \$625.00. The tenants continue to reside in the rental unit.

The landlords issued the 2 Month Notice, with an effective move-out date of July 31, 2017, for the following reason:

- The Landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant.

The landlord's agent provided the following background for why they had decided to issue the 2 Month Notice. They testified that the 2 Month Notice was issued as the owners intend to renovate and sell the house. In order to sell "as quickly as possible", and obtain a higher selling price, the landlord wanted to renovate the home. The landlord's agent testified that he received instructions from the owner of the home that the home must be vacant as the tenants were too messy, and they required the unit to be vacant before assessing what renovations needed to be done.

The landlord did not obtain any permits, nor does the landlord have any plans in place as of the hearing date other than to have their contractor attend the property to assess what renovations needed to be done.

The tenants dispute the 2 Month Notice, stating that the landlord did not obtain any permits or approvals to proceed with any kind of renovation, especially one that required the landlord to end this tenancy.

Analysis

Subsection 49(6) of the *Act* sets out that a landlord may end a tenancy in respect of a rental unit where the landlord, in good faith, has all the necessary permits and approvals required by law and intends in good faith, to...renovate or repair the rental unit in a manner that requires the rental unit to be vacant;

Residential Tenancy Policy Guideline 2: Good Faith Requirement When Ending a Tenancy 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 that they do not have an ulterior motive for ending the tenancy.”

Although the landlord stated that they had issued the 2 Month Notice in order to renovate the home, I find that the tenants had raised doubt as to the true intent of the landlord in issuing this notice. As the tenants raised doubt as to the landlord's true intentions, the burden shifts to the landlord to establish that they do not have any other purpose to ending this tenancy.

The landlord did not dispute the fact that there were no plans in place for the intended renovations, nor did the landlord obtain any necessary permits or approvals. In the hearing, the landlord also did not provide sufficient evidence as to why the contractor could not properly assess the property while the tenants were still living there. The landlord admitted that the ultimate plan was for the owner to sell the home at a good price.

I find that the landlord has not met their burden of proof to show that they issued the 2 Month Notice in good faith, in order to renovate or repair the rental unit in a manner that requires the rental unit to be vacant. I find that the testimony of both parties during the hearing raised questions about the landlord's good faith. The landlord's agents stated that the owner wished to end this tenancy as the tenants were too messy, and they wanted to sell as quickly as possible. Section 49(6) does not provide for preparing the home for sale, or evicting a messy tenant, as reasons to end the tenancy by way of a 2 Month Notice.

As the good faith intention of the landlord was called into question, Residential Tenancy Policy Guideline 2 clearly states that “the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy”. I find that there was no specific renovation plan provided by the landlord to support why they required the tenants to permanently vacate the rental home. The landlord also raised concerns about the state of the tenants' messiness, which brings into the question the landlord's true intentions to end this tenancy.

I find that the landlord has not met their burden of proof to show that they do not have any other purpose in ending this tenancy. Based on a balance of probabilities and for the reasons outlined above, I find that the landlord has not met their onus of proof to show that the landlord, in good faith, requires the tenant to vacate this rental home in order to renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

Accordingly, I allow the tenants' application to cancel the 2 Month Notice.

Conclusion

The tenants' application to cancel the landlord's 2 Month Notice is allowed. The landlord's 2 Month Notice, dated May 30, 2017, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

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: August 11, 2017

Residential Tenancy Branch

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