



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, FF; CNL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- an order of possession for landlord's use of property, pursuant to section 55; and
- authorization to recover the filing fee for this application, pursuant to section 72.

This hearing also dealt with the tenant's cross-application pursuant to the *Act* for:

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property, dated May 31, 2017 ("2 Month Notice"), pursuant to section 49.

The landlord, the landlord's wife and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that his agent had authority to speak on his behalf at this hearing. This hearing lasted approximately 49 minutes in order to allow both parties to fully present their submissions.

Both parties confirmed receipt of the other party's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with the other party's application.

As advised to both parties during the hearing, I considered the tenant's written evidence at the hearing and in my decision because the landlord consented to it, despite the fact that it was received late on the night before this hearing, less than 7 days prior to the hearing, contrary to Rule 3.15 of the Residential Tenancy Branch *Rules of Procedure*.

The tenant confirmed personal receipt of the landlord's 2 Month Notice on May 31, 2017. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlord's 2 Month Notice on May 31, 2017.

Issues to be Decided

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

Is the landlord entitled to recover the filing fee for his application?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties and the landlord's wife, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claims and my findings are set out below.

The tenant testified that her tenancy began around June 2011 or 2012 with the former landlord. The landlord said that he purchased the property on May 26, 2017 and continued the tenant's tenancy. Both parties agreed that this is a month-to-month tenancy, monthly rent in the amount of \$400.00 is payable on the first day of each month and no security deposit was paid. The tenant continues to reside in the rental unit. No written tenancy agreement was signed with the former or current landlord, only verbal agreements were reached.

The landlord seeks an order of possession based on the 2 Month Notice and to recover the \$100.00 application filing fee. The tenant seeks to cancel the landlord's 2 Month Notice.

The landlord's 2 Month Notice, which states an effective move-out date of July 31, 2017, indicates the following reason for seeking an end to this tenancy:

- *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 landlord stated that his son intends to occupy the rental unit after the tenant vacates. He said that his son wants independence, relocated to come back home, he lost his job in a town farther away but found a job closer to home, he intends to help fix up the rental unit and his belongings were currently in the landlord's garage because he is living at home.

The tenant said that she was told by the former landlord who sold the rental unit to the current landlord that the current landlord would continue the tenancy but her rent would go up. The tenant produced an email, dated May 4, 2017, from the former landlord advising the tenant "...your rent is not going up by very much, still a way under the going rate out there..."

The tenant and the landlord's wife agreed that there were discussions between them on May 15, 2017, regarding a proposed increase in rent. The landlord denied any discussions. The landlord's wife initially proposed a 100% increase in rent from \$400.00 to \$800.00 and then claimed that it was "too high" so maybe \$700.00 was more reasonable. Discussions then occurred regarding a proposed increase to \$500.00 per month.

The tenant disputes the landlord's 2 Month Notice, stating that the landlord did not issue it in good faith. The tenant said that the landlord tried to increase her rent just two weeks before the 2 Month Notice was issued and when she did not agree, he served her with the notice to end tenancy. The tenant said that she educated herself regarding the rent increase rules and the limit of 3.7% for rent increases for the year 2017 and refused to pay above \$400.00 to the landlord.

Analysis

Subsection 49(3) of the Act states 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.

According to subsection 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. The tenant received the 2 Month Notice on May 31, 2017, and filed her application to dispute it on June 7, 2017. Therefore, the tenant's application is within the 15 day time limit under the *Act*. Therefore, the onus shifts to the landlord to justify the basis of the 2 Month Notice.

Residential Tenancy Policy Guideline 2: Good Faith Requirement When Ending a Tenancy states:

A claim of good faith requires honesty of intention with no ulterior motive...

...

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.

I find that the landlord had an ulterior motive for issuing the 2 Month Notice and it was not issued in good faith.

The landlord attempted to increase the tenant's rent approximately two weeks before the 2 Month Notice was issued on May 31, 2017. The landlord denied any such discussions between his wife and the tenant, yet the landlord's wife admitted that she discussed an increase in rent with the tenant for \$800.00, then \$700.00, and finally \$500.00 per month.

The landlord's wife claimed that it was always the plan for her son to move into the rental unit. However, when her son came to live with the landlord on May 11, 2017, the landlord's wife still proposed a rent increase to the tenant, which would have been unnecessary if the tenant was leaving anyway on September 1, 2017, as claimed by the landlord.

Based on a balance of probabilities and for the reasons outlined above, I find that the landlord has not met his burden of proof to show that the landlord's son intends to occupy the rental unit in good faith.

Accordingly, I allow the tenant's application to cancel the landlord's 2 Month Notice. The 2 Month Notice, dated May 31, 2017, is cancelled and of no force or effect. The

landlord is not entitled to an order of possession for landlord's use of property. This tenancy continues until it is ended in accordance with the *Act*.

As the landlord was unsuccessful in this application, he is not entitled to recover the \$100.00 filing fee from the tenant.

Conclusion

The tenant's application to cancel the landlord's 2 Month Notice is allowed. The landlord's 2 Month Notice, dated May 31, 2017 is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

The landlord's entire application is dismissed without leave to reapply.

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 02, 2017

Residential Tenancy Branch