



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNL, RR, FF

Introduction

On July 21, 2017, the Tenant submitted an Application for Dispute Resolution requesting the following:

- to cancel a 2 Month Notice to End Tenancy for Landlord Use of Property dated June 25, 2017.
- To reduce the rent for repairs, services or facilities agreed upon but not provided.
- to recover the filing fee for the Application.

The matter was set for a conference call hearing. Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence, orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issues

The Tenant is seeking to cancel the 2 Month Notice and is also requesting a reduction in rent.

An Arbitrator has the discretion to dismiss unrelated claims with or without leave to reapply. Since the primary issue to determine in this hearing is whether or not the tenancy is ending, I dismiss the Tenant's other claims with leave to reapply.

Issues to be Decided

- Is there cause to end the tenancy based on a 2 Month Notice To End Tenancy For Landlord's Use Of Property dated June 25, 2016?
- Is the Tenant entitled to recover the cost of the filing fee?

Background and Evidence

The Landlord and Tenant testified that the tenancy began on January 1, 2012. The Landlord purchased the rental property in December 2015. Rent in the amount of \$1,400.00 is to be paid to the Landlord by the first day of each month. The Tenant paid the original Landlord a security deposit of \$725.00. The Tenant provided the Residential Tenancy Branch with a copy of a written tenancy agreement.

The Tenant testified that on June 26, 2017, they received a 2 Month Notice To End Tenancy For Landlord's Use Of Property from the Landlord.

The 2 Month Notice contains one reason for ending the tenancy:

- The rental unit will be occupied by the Landlord or the Landlord's spouse or a close family member of the Landlord or the Landlord's spouse.

The Tenant disputed the Notices by applying for Dispute Resolution within the required timeframe.

The burden to prove cause to end a tenancy rests with the Landlord. With respect to the issuance of the 1 Month Notice, The Landlord testified that his daughter Ms. J.C. is moving into the rental unit. He testified that his daughter is living with him and she needs more privacy. He testified that she moved into the city from Prince George. The Landlord testified that the rental unit is a two bedroom suite and she will have her cousin move in with her.

The Landlord's daughter Ms. J.C. testified that she is moving into the rental unit. She testified that she currently living with her father. She testified that her boyfriend from out of town regularly visits and she needs her own place with more privacy.

The Landlord testified that there is another rental unit on the property; however, it has been rented out and his daughter wants to live in the upper unit.

The Landlord testified that he had listed the house for sale in the middle of May 2017. He submitted that he did not receive any good offers, so he cancelled the listing in July 2017.

In response, the Tenants asked the Landlord if his daughter is paying rent. The Landlord replied that she is not paying rent currently but will be paying rent to help him out when she moves into the rental unit.

The Tenants responded by submitting that the Landlord has given them conflicting information on who is moving into the rental unit. They submitted that the Landlord told them his daughter is moving from Prince George to go to university. They submit that the Landlord never told them his daughter lives with him. The Tenants testified that they provided photographs of the Landlord's family and residence in an effort to show that the Landlord's story that his daughter is moving into the unit is not true.

The Tenants submitted that they believe the Landlord wants to evict them so he can charge more rent for the unit. They submitted that the following events took place before they received the 2 Month Notice:

- March 2017, the Landlord asked them to sign a new tenancy agreement.
- April 2017, the Landlord tried to increase the rent.
- May 2017, the Landlord issued a Notice of Rent Increase
- June 2017, the Landlord issued the 2 Month Notice

The Tenants testified that in May 2017, the Landlord stated in he was going to sell the house because he cannot afford it.

The Tenants submitted that the occupant who moved into the lower unit of the rental property is a bad Tenant and they questioned why the Landlord would let his daughter move in above.

Residential Tenancy Policy Guideline #2 Good Faith Requirement when Ending a Tenancy provides the following:

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 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.

Analysis

Section 51 of the Act states that if steps have not been taken to accomplish the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice, or if the rental unit is not used for the stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice, the Landlord, must pay the Tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

Residential Tenancy Policy Guideline #2 Good Faith Requirement when Ending a Tenancy provides the following:

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Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Section 49 of the Act permits the Landlord to issue the Notice if the Landlord intends in good faith to occupy the rental unit. The Tenants raised the question of the Landlord's motive. In considering the intention of the Landlord, I find that the Landlord provided affirmed testimony that his daughter will be moving into the rental unit. The Landlord's daughter testified that she will be moving into the rental unit. I find that the Landlord has established that that he intends for his daughter to move into the rental unit.

While I acknowledge the Tenant's submissions regarding what transpired prior to receiving the 2 Month Notice, I find that the Landlord has the right to sell his property and to increase the rent annually. I find that the Tenants' submission, that they do not believe the Landlord's story, does not outweigh the testimony of the Landlord that his daughter is moving into the unit.

The Act provides recourse for a Tenant if a Landlord fails to use the rental unit for the stated purpose within the Notice. Should that occur, the Tenants have the right to apply for dispute resolution for compensation in accordance with section 51 of the Act.

The Tenant's application to cancel the 2 Month Notice To End Tenancy For Landlord's Use Of Property dated June 25, 2017, is dismissed.

Under section 55 of the Act, when a Tenant's Application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the Notice complies with the requirements regarding form and content and I find that the Landlord is entitled to an order of possession effective by 1:00 p.m. on September 30, 2017, after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

As the Tenant was not successful with his Application, I do not grant recovery of the cost of the filing fee.

Conclusion

The Tenant's Application to cancel the 2 Month Notice To End Tenancy For Landlord's Use Of Property dated June 25, 2017, is dismissed.

I grant the Landlord an order of possession effective by 1:00 p.m. on September 30, 2017. The Tenants must be served with the order of possession.

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: September 12, 2017

Residential Tenancy Branch