



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF

Introduction

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the two month Notice to End Tenancy dated July 31, 2017
- b. An order to cancel a 10 day Notice to End Tenancy dated August 19, 2017.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the 2 month Notice to End Tenancy was personally served on the Tenant on July 31, 2017. I find that the 10 day Notice to End Tenancy was served on the Tenant by posting it to the door on August 19, 2017. I find that the Application for Dispute Resolution filed by the landlord was served on the landlord on August 11, 2017 and the Amendment to Dispute Resolution was served on the landlord on August 23, 2017. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the two month Notice to End Tenancy dated July 31, 2017?
- b. Whether the tenant is entitled to an order cancelling the 10 day Notice to End Tenancy dated August 19, 2017.

Background and Evidence

The previous owner and the tenant entered into a month to month written tenancy agreement that provided that the tenancy would start on February 1, 2016. The tenancy agreement provided that the tenant(s) would pay rent of \$550 per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$275 and a pet damage deposit of \$275 on January 17, 2016.

The respondent purchased the property with possession in November 2016.

Grounds for Termination:

The Notice to End Tenancy relies on section 49 of the Residential Tenancy Act. That section provides as follows:

- The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse

The respondent testified she needs the rental property so that her mother in law can move in downstairs.

Policy Guideline #2 includes the following:

"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 tenant disputes the good faith intention of the landlord based on the following:

- There are two basement suites downstairs. The tenant of the other rental unit moved out a few months ago. The landlord rented this unit very quickly to a new tenant.
- The other rental unit is attached to the upstairs and is a much more appropriate living space for the mother in law to move to if they did in fact have the intention to have her move in.
- The previous tenant paid a rent that was originally \$750 per month but was reduced to \$700 per month. She does not know what the new tenant is paying in rent.

- The tenant wanted to raise problems she was having with the landlord and allegations of the breach of the covenant of quiet enjoyment. I determined this was not relevant to the issues before me.
- The tenant testified that she has attempted to pay the rent on at least 5 occasions. The landlord has demanded the payment be in cash but is not prepared to give the tenant a receipt.

Application to Cancel the 2 month Notice to End Tenancy:

After carefully considering all of the evidence I determined the landlord failed to establish a good faith intention to have a family member to move into the rental unit for the following reasons:

- The landlord has the burden of proof to establish a good faith intention to comply with the Act.
- The landlord failed to present any evidence from the mother in law.
- The landlord failed to provide a sufficient explanation as to why she did not move the mother in law to the basement suite which is attached to the landlord's property when that rental unit became available.
- There is sufficient evidence that I can determine there is tension in the relationship between the landlord and the tenant

As a result I determined the landlord failed to establish a good faith intention to end the tenancy pursuant to the 2 month Notice to End Tenancy.

Application to Cancel the 10 day Notice to End Tenancy:

Section 26(2) of the Residential Tenancy Act provides as follows:

Rules about payment and non-payment of rent

26 (2) A landlord must provide a tenant with a receipt for rent paid in cash.

I determined the landlord has failed to establish sufficient grounds to end the tenancy based on the 10 day Notice to End Tenancy for the following reasons:

- I find that the tenant has attempted to pay the rent on at least 5 occasions but the landlord has refused to accept payment.

- The Residential Tenancy Act requires that the landlord gave the tenant a receipt if the rent is paid by cash. The landlord refused to provide a receipt. I determined the tenant is not obliged to pay the rent until the landlord is prepared to provide a receipt. To rule otherwise would deny the tenant the protection of the Act.
- I determined the tenant has sufficiently tendered the rent. While the rent money remains owing, the tenant is not required to pay the rent for the previous month until the landlord requests payment and provides a receipt.
- I determine the landlord is not entitled to an Order of Possession for non-payment of rent where the tenant has tendered rent payment but the landlord refuses to provide a rent receipt and refuses to accept payment.

Determination and Orders:

After carefully considering all of the evidence I determined that the landlord has established sufficient cause to end the tenancy. I ordered that the 2 month Notice to End Tenancy and the 10 day Notice to End Tenancy be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged.

This decision is final and binding on the parties.

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 20, 2017

Residential Tenancy Branch