



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL (Tenant's Application)
 OPL, FF (Landlord's Application)

Introduction

This hearing was convened by way of a conference call in response to an Application for Dispute Resolution (the "Application") filed by both the Tenant and the Landlord. The Tenant applied to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property (the "2 Month Notice"). The Landlord applied for an Order of Possession to end the tenancy pursuant to the 2 Month Notice, and to recover the filing fee from the Tenant.

Both parties appeared for the hearing, and the Landlord provided a witness. All testimony was taken under affirmation. The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence and make submissions to me during the hearing.

The Landlord confirmed receipt of the Tenant's Application. However, the Tenant denied receipt of the Landlord's Application but stated that he was not submitting the Landlord was lying about service.

The Landlord testified that her Application was served to the Tenant personally on August 3, 2017 and this was verifying by evidence from the witness. As a result, I concluded that the Landlord had served the Tenant with her Application pursuant to Section 89(1) (a) of the *Residential Tenancy Act* (the "Act").

The parties also confirmed that apart from the 2 Month Notice, no other documentary evidence had been served or provided prior to this hearing.

Issue(s) to be Decided

Is the the Tenant entitled to cancel the 2 Month Notice dated June 30, 2017?

Background and Evidence

Both parties agreed that this oral tenancy for the basement suite of the single family home started in October 2012 on a month to month basis. Monthly rent was payable by the Tenant in the amount of \$900.00 per month. The parties agreed the current amount payable for rent is \$1,000.00 on the first day of each month. The Landlord confirmed that the Tenant had not paid rent for October 2017 at the time of this hearing as they had not yet met to exchange these monies.

The Landlord testified the 2 Month Notice was served to the Tenant on June 30, 2017 by posting it to the Tenant's door and handing it personally to him. The Tenant denied that he had been served with the second page of the 2 Month Notice but stated that he was not bothered about this as he knew what his rights were under the Act.

The Landlord's witness confirmed service of the 2 Month Notice to the Tenant personally on June 30, 2017. I also noted that the Tenant had provided the second page of the 2 Month Notice into evidence. Therefore, I determined that the Tenant had been served with both pages of the 2 Month Notice.

The 2 Month Notice provided by both parties into evidence shows a vacancy date of September 1, 2017. The reason indicated for ending the tenancy is because the rental unit will be occupied by the Landlord or the Landlord's close family member.

The Landlord was informed that she had the burden to prove the 2 Month Notice. Therefore I asked her to present evidence of the reason for ending the tenancy.

The Landlord testified that her fiancés, who was the witness for this hearing, had recently sold his house and was now residing with the Landlord and her daughter and son in the upper part of the rental home. The Landlord testified that she has sleep apnea and her fiancés therefore has to sleep in a trailer on the rental property to allow the Landlord to sleep properly through the night.

The Landlord testified that her daughter is going to be moving into the rental unit in order to free up a bedroom in the upper portion to allow the Landlord's fiancés to sleep in the same home. The Landlord testified that her daughter is going to university soon and instead of residing on campus, she will be staying in the rental unit to save money on her university fees.

The Tenant rebutted stating that he has had a lengthy history with several attempts being by the Landlord to end his tenancy. The Tenant explained that they had

undergone five dispute resolution proceedings prior to this hearing and in each one, the Landlord's notice to end tenancy was cancelled.

The Tenant provided no evidence of any previous dispute resolution hearings that had taken place between the parties. However, the Landlord acknowledged that there had been several hearings in the past in which three notices to end tenancy for the Landlord's use of the property had been cancelled through arbitration.

The Tenant confirmed that he had a strained relationship with the Landlord in which the Landlord had attempted to end the tenancy for ulterior motives. The Tenant submitted the Landlord had attempted to increase his rent amount to an unacceptable amount because he had additional occupants.

The Tenant also submitted that the Landlord's fiancés has been residing with the Landlord for a long period of time and the Landlord has had previous relationships with men that have resided in the upper portion. The Tenant questioned why there was now a sudden need for the Landlord's daughter to move into the rental unit. The Tenant pointed out that the Landlord provided no evidence of a sale of property and even if this had been furnished, the evidence shows the Landlord is trying to get rid of the Tenant.

The Landlord confirmed that she had a strained and stressful relationship with the Tenant. The Landlord called the witness who testified that he had sold his house on September 1, 2017 and was now residing in the upper portion of the rental home. The witness confirmed the Landlord's sleep condition and that he is living with the Landlord and her children in the upper portion since the sale of his property.

The Tenant and Landlord then proceeded to provide evidence of other alleged breaches of the Act. The Landlord submitted that the Tenant was violent and she had initiated a previous dispute resolution to end the tenancy immediately due to his violent and disturbing nature. The Landlord also asserted that the Tenant did not pay his rent on time and that he was trying to extort the Landlord for a payment to leave the tenancy.

The Tenant disagreed with this testimony and the parties started to argue between them on these matters. The parties were informed that these issues were not the basis of the 2 Month Notice which was the matter before me. The parties were cautioned of the remedies available under the Act to deal with these allegations.

Analysis

Section 49(3) of the Act allows a landlord to end a tenancy for owner occupancy. Section 49(8) of the Act states that a tenant may dispute a 2 Month Notice by making an Application within 15 days after the date the tenant receives it.

I accept the undisputed evidence that the Tenant was served with the 2 Month Notice on June 30, 2017. The Tenant filed to dispute the 2 Month Notice on July 6, 2017. Therefore, I find the Tenant filed the Application within the required time limits set by the Act. I also accept the contents of the 2 Month Notice comply with Section 52 of the Act.

In determining the Tenant's Application on whether the 2 Month Notice should be cancelled, Section 49(3) specifically states that the owner of the rental unit, or a close family member, must intend to occupy the rental unit in good faith. Therefore, I first turn my mind to the question of whether the Landlord has issued the 2 Month Notice in good faith. In considering the good faith element Policy Guideline 2 states:

"GOOD FAITH REQUIREMENT"

Good faith is an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage.

A claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End the Tenancy. This might be documented through:

- *a Notice to End Tenancy at another rental unit;*
- *an agreement for sale and the purchaser's written request for the seller to issue a Notice to End Tenancy; or*
- *a local government document allowing a change to the rental unit (e.g., building permit) and a contract for the work.*

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 they do not have an ulterior motive for ending the tenancy.

[Reproduced as written]

In this case, based on the evidence before me, I find the Landlord has failed to establish that the Tenant has been served with the 2 Month Notice in good faith. I make this finding on the basis that the parties confirmed that they have a tumultuous relationship. This was certainly evident from the parties conduct during the hearing as the Landlord made several allegations against the Tenant which did not form part of the 2 Month Notice.

While the parties did not provide any specific file numbers or written decisions pertaining to previous disputes between them, I am satisfied by the parties' oral evidence that the Landlord has previously attempted to end this tenancy by: an immediate order; through a notice to end tenancy for cause; and three other notices for the Landlord's use of the property. I accept the evidence before me that on each occasion the Landlord has not been successful in ending the tenancy.

Based on the foregoing, I find this is sufficient evidence to show the Landlord has an ulterior motive for ending the tenancy and that the 2 Month Notice before me has not been issued in good faith. While I acknowledge the parties do have a strained relationship and that this has proved to be a difficult tenancy, this does not form a basis on which I am able to end the tenancy. Neither is a 2 Month Notice intended to be used for these reasons.

Furthermore, I am also not satisfied that the Landlord's daughter intends to move into the rental unit. The Landlord failed to provide corroborative evidence of; the sale of her fiancé's property; medical evidence to show the Landlord has to sleep on her own; and verification that her daughter is enrolled in university and will not be residing at that university campus. The Landlord relies only her oral and witness testimony as evidence of this which is disputed. I find this is not sufficient evidence to prove the 2 Month Notice. As a result, I find the Landlord has failed to convince me that her daughter has been displaced by the Landlord's fiancé and has a bona fide intent to move into the rental unit.

After considering the totality of the evidence before me, I find there is sufficient evidence before to suggest the Landlord has an ulterior motive to end this tenancy. Therefore, I find the 2 Month Notice is hereby cancelled.

Conclusion

The Landlord has failed to prove the 2 Month Notice. The Landlord's Application is dismissed. The Tenants Application to cancel the 2 Month Notice dated June 30, 2017 is granted. The tenancy will continue until it is ended in accordance with the Act. The Tenant is cautioned to pay rent in this tenancy.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: October 02, 2017

Residential Tenancy Branch