



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF

Introduction

This hearing dealt with the tenant's 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 (the 2 Month Notice) pursuant to section 49;and
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord was represented legal counsel. The parties acknowledged receipt of each other's documentary evidence.

Issues to be Decided

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

Is the tenant entitled to recover the filing fee for this application from the landlord?

Background and Evidence

The tenant gave the following testimony. The tenancy began on or about August 1, 2012 and is ongoing. Rent in the amount of \$1350.00 is payable in advance on the first day of each month. The landlord issued a Two Month Notice to End Tenancy for Landlords Use of Property on July 26, 2017 with an effective date of September 30 2017 on the basis that *“All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit”*. The tenant testified that she doesn’t believe that the new owner will be occupying the unit and thinks its “unfair” that she has to move.

Counsel for the landlord submitted the following. The suite has been sold and the new owner takes possession on November 1, 2017. Counsel submits that the tenant has had over three months to get her affairs in order. Counsel submits that the landlord has tried to work with the tenant and even attempted to find her alternative housing which the tenant has refused. Counsel requests an order of possession.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant’s claim and my findings around each are set out below.

The tenant has called into question whether the landlord has issued the notice in good faith. Residential Tenancy Policy Guideline 2 addresses the “good faith requirement” as follows.

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:

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.

Counsel for the landlord submits that the purchaser or close family member fully intends to move into the suite when they take possession and that the notice was issued in good faith. I have reviewed the Contract of Purchase and Sale and was unable to locate any clause, addendum or request by the purchaser in writing, asking to issue a notice to end the tenancy and be given vacant possession. When I asked counsel if he could direct me to it, he also was unable to find any documentation to support that request. When a landlord issues a notice to end a tenancy, they bear the burden of providing sufficient evidence to support the issuance of the Notice. In the case before me, the landlord has not been able to provide a written request from the purchaser to issue this notice. In the result, due to the insufficient documentation to support the issuance of the Notice, I set aside the 2 Month Notice to End Tenancy for Landlords Use of Property

dated July 26, 2017 with an effective date of September 30, 2017; it is of no effect or force.

As the tenant has been successful in her application she is entitled to a one time deduction of \$100.00 from the next rental payment due in full satisfaction of her claim to recover the filing fee.

Conclusion

The notice is set aside. The tenancy continues.

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: October 26, 2017

Residential Tenancy Branch