



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the “Act”), to cancel Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Notice”) issued on September 22, 2017.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice to End Tenancy. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenant’s request to set aside the Notice to End Tenancy and the tenant’s application to recover the filing fee at these proceedings. The balance of the tenant’s application is dismissed, with leave to re-apply.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving the reason given on the Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issue to be Decided

Should the Notice issued on September 22, 2017 be cancelled?

Background and Evidence

The tenancy began on May 1, 2014. Rent in the amount of \$750.00 was payable on the first of each month. The tenant paid a security deposit of \$350.00.

The parties agreed that the Notice was served on the tenant indicating that the tenant is required to vacate the rental unit on November 30, 2017.

The reason stated in the Notice was that:

- 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's agent testified that the owners of the property are in their 80's and in poor health and being a landlord is not something that is on their priority list any longer.

The landlord's agent stated that the female owner is suffering from a lot of medical condition, including bladder cancer and will be having bladder surgery sometime in January 2018. The agent stated that the female owner will need to be in an area that has easy access to a bathroom. Filed in evidence are copies of medical letters.

The landlord's agent testified that the premise is three levels and the landlord's live on the lower two levels. The agent stated this is no longer suitable for them due to their age and medical conditions. The agent stated the female owner needs to be on one level and not to be dealing stairs on a daily basis.

The tenant testified that they believe the landlord did not issue the Notice in good faith. The tenant stated that early they received an informal letter stating that the landlord's daughter would be moving into the premises and they should find new accommodation for August 30, 2017. Filed in evidence is a copy of the note dated May 30, 2017.

The tenant testified that they believe the landlord is using their medical reasons to invent the reason to end their tenancy as they were aware of their medical condition earlier.

The landlord's agent testified that the landlord's daughter was originally planning to move back when they finished school out of province; however, their granddaughter's plans changed and they have obtained a job, and now living with their boyfriend. Filed in evidence is an affidavit of their granddaughter.

Analysis

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

How to end a tenancy is defined in Part 4 of the Act. Section 49(1) of the Act a landlord may end a tenancy by giving notice to end the tenancy.

I have considered all of the written and oral submissions submitted at this hearing, I find that the landlord has provided sufficient evidence to show that:

- The rental unit will 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)

In this case the landlords are in their 80's and are no longer interested in being a landlord due to their medical issues, which is reasonable. The landlords are currently living in a two level split, which is on the lower two levels of the premises that is subject to this proceeding.

The tenant resides on the 3rd level which is a self-contained unit that contains no stairs within in it. The landlord seeks to use the 3rd level for their own use as the space is more suitable for their health needs. I find that reasonable since the female landlord is undergoing surgery for bladder cancer in January 2018 and it is reasonable that they would want to be on one level.

While the landlords may have had the intent that their granddaughter would be back after they completing school, that did not happen. This may have been simple wishing on their part. I find the note from the landlord dated May 30, 2017, standing alone is not sufficient to prove the landlord has an ulterior motive to end the tenancy. The affidavit of the granddaughter was that they were not moving back to the province.

I do not find the landlord has an ulterior motive, such as making renovation to significantly increase the rent. I find it reasonable and believe that the landlords truly intend to use the premises for their own use to accommodate their medical needs.

I find the Notice issued on September 22, 2017, has been proven by the landlord and is valid and enforceable. I find the tenancy legally ended on November 30, 2017, and the

tenant is now overholding the rental unit. Therefore, I dismiss the tenant's application to the Notice.

As the landlord has accepted occupancy rent for the month of December 2017, I find it appropriate to extend the effective vacancy date to December 31, 2017, pursuant to section 66 of the Act. I find that the landlord is entitled to an order of possession effective on **December 31, 2017, at 1:00 P.M.** This order must be served on the tenants and may be filed in the Supreme Court.

Since the tenant was not successful with their application, I find the tenant is not entitled to recover the filing fee from the landlord.

Conclusion

The tenant's application to cancel the Notice, issued on September 22, 2017, is dismissed.

The landlord is granted an 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: December 13, 2017

Residential Tenancy Branch