



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, FFT

Introduction

On November 8, 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 October 23, 2017.
- for the Landlord to comply with the Act
- to recover the filing fee for the Application.

On January 8, 2018, the Tenant submitted another Application for Dispute Resolution requesting the following:

- to cancel a 2 Month Notice to End Tenancy for Landlord Use of Property dated December 26, 2017.

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.

Issues to be Decided

- Is there a sufficient reason to end the tenancy based on the 2 Month Notices To End Tenancy For Landlord's Use Of Property?
- Are the Tenants entitled to recover the cost of the filing fee?

Background and Evidence

The Parties testified that the tenancy started on July 1, 2010, and is a month to month tenancy. Rent in the amount of \$995.00 per month is to be paid to the Landlord. The Tenant paid the Landlord a security deposit of \$497.50 to the Landlord. The Landlord testified that the rental unit is a two bedroom and two bathroom unit.

The Tenant testified that she received two different 2 Month Notices To End Tenancy from the Landlord as follows:

- 2 Month Notice To End Tenancy For Landlord's Use Of Property dated October 23, 2017.
- 2 Month Notice To End Tenancy For Landlord's Use Of Property dated December 26, 2017.

The 2 Month Notice dated October 23, 2017, contains two reasons 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.
- 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 to in good faith to occupy the rental unit.

The 2 Month Notice dated December 26, 2017, contains the following 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 Tenants disputed both Notices by applying for Dispute Resolution within the required timeframes.

The burden to prove the cause to end a tenancy rests with the Landlord. With respect to the issuance of the 2 Month Notice dated October 23, 2017, the Landlord testified she almost had a purchaser to buy the unit but the deal did not go through. She testified that she did not know that the deal did not go through at the time she issued the

2 Month Notice. The Landlord testified that she made a mistake by selecting both reasons for ending the tenancy.

The Landlords testimony was very brief. The Landlord testified that she is currently living in a rental unit and her circumstances have changed and she wants to move into the unit. She testified that her son is back from another another Province and will be moving into the unit with her. The Landlord submitted that she issued the second 2 Month Notice dated December 26, 2017, because she made a mistake on the first 2 Month Notice.

In reply, the Tenant's advocate testified that the conditions for sale were never satisfied, so there was no sale agreement. He submitted that it makes no sense that the Landlord was selling the unit and moving in at the same time. He submitted that the Tenants do not believe that the Landlord is moving into the unit.

The Tenant submitted that in the spring of 2017, she asked the Landlord about completing some upgrades and painting the rental unit and the Landlord responded that she may be selling the unit.

The Tenant submitted that the Landlord hired a realtor who tried to make arrangements to enter the unit. The Tenants provided a copy of a text message conversation between the parties on November 1, 2017, where the Landlord states "we are selling unit".

On December 26, 2017, the Landlord issued the second 2 Month Notice indicating the rental unit will be occupied by the Landlord or the Landlord's spouse or a close family member of the Landlord.

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

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

I find that the evidence establishes that the Landlord has or had another purpose or motive for ending the tenancy. The Landlord sent a text message to the Tenant after she issued the 2 Month Notice dated October 23, 2017, indicating "we are selling unit" and made arrangements for a realtor to view the rental property. Since that occurred after the Landlord issued the 2 Month Notice, I find that reason to be intentional rather than a mistake. The Landlord cannot end the tenancy for the reasons of selling the unit and moving into the unit at the same time.

The burden is on the Landlord to prove the intent to occupy the rental unit. The Landlord indicated she currently rents elsewhere and that her and her son will be moving into the unit.

The Landlord's testimony that she almost had a buyer indicates to me that she intends to sell the unit. The Landlord did not provide any documentary evidence to support her brief testimony that her and her son are planning to move into the unit. The Landlord's son was not present at the hearing to provide testimony.

I find that there is insufficient evidence from the Landlord to establish that she has a true intent to move into the rental unit.

The 2 Month Notice To End Tenancy For Landlord's Use Of Property dated October 23, 2017, and the 2 Month Notice To End Tenancy For Landlord's Use Of Property dated December 26, 2017, are set aside.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. The Tenants were successful with their application to set aside the notices. I authorize the Tenants to deduct the amount of \$100.00 from one future rent payment. I do not award the recovery of the second filing fee as the Tenants could have amended their first application.

The tenancy will continue until ended in accordance with the Act.

Conclusion

The Tenant's application to cancel the 2 Month Notice to End Tenancy dated October 23, 2017, and December 26, 2017, is successful. The Notices are set aside.

The Tenants are authorized to deduct \$100.00 for the filing fee from one (1) future rent payment.

The tenancy will continue until ended in accordance with the Act.

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: January 29, 2018

Residential Tenancy Branch