



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, RP, LRE, LA,

Introduction

On February 17, 2018, the Tenant submitted an Application for Dispute Resolution under the Residential tenancy Act (“the Act”) asking to cancel a 2 Month Notice to End Tenancy for Landlord Use of Property; for the Landlord to perform repairs to the unit; and to suspend or set conditions on the Landlord’s right to enter the unit.

The matter was set for a conference call hearing. The Landlords and Tenant appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. The Landlord testified that they received the Tenant’s documentary evidence. The Landlord did not submit any evidence in response to the Tenant’s application. 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.

Preliminary and Procedural Matters

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

Since the primary issue to be considered is whether or not the tenancy is ending due to the issuance of a 2 Month Notice To End Tenancy For Landlord’s Use Of Property, the

Tenants request for a repair order and the suspension of the Landlords right of entry are dismissed with leave to reapply.

Issues to be Decided

- Should the 2 Month Notice to End Tenancy be cancelled?

Background and Evidence

The parties testified that the tenancy began on June 15, 2012, and is a month to month tenancy. Rent in the amount of \$858.00 is to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit in the amount of \$375.00.

The Landlord issued the Tenant a 2 Month Notice dated February 10, 2018. The reason for ending the tenancy in the Notice states:

- 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 2 Month Notice provides information for Tenants who receive the Notice. The Notice states that a Tenant has the right to dispute the Notice within 15 days after it is assumed to be received by filing an Application for Dispute Resolution at the Residential Tenancy Branch.

The Tenant disputed the Notice by applying for dispute resolution on February 17, 2018, within the required time period.

The Landlord testified that their son is divorced with three children and they want to use the rental unit for their son to use.

The Landlords' son, Mr. PS testified that he is moving into the unit to be closer to his parents who often need his help with moving items, computer issues, and translation. He testified that he is currently living on the other side of town in a basement suite. He testified that he has not given his Landlord written notice to end his tenancy. He testified that moving will also bring him closer to his ex-wife's place and make it easier for the children.

In response to the Landlord's testimony and evidence, the Tenant submitted that the Landlord told her that her son is homeless; however he is not. The Tenant submitted

that the Landlord's son lives in a place across town and he is a realtor. The Tenant submitted that the town is very small and it only takes five minutes to come across town.

The Tenant testified that when she asked the Landlord to explain why she was receiving a notice to end tenancy, the Landlord told her that it was because the Landlord needs to do repairs of the rental unit and they need the unit to be vacant.

The Tenant testified that prior to receiving the 2 Month Notice she raised her concern with the Landlord regarding the condition of the rental unit and the need for the Landlord to complete repairs. The Tenant submitted a copy of a letter she sent to the Landlord on January 31, 2018, where she asks the Landlord to have her items fixed or replaced in the next month.

The Tenant testified that she received the 2 Month Notice To End Tenancy For Landlord's Use Of Property shortly after sending the Landlord the letter requesting repairs.

The Tenant testified that when she received the 2 Month Notice the rental unit above her was vacant for February 2018. She testified that the Landlord could have used that unit for her son, or could have offered the unit to her. She does not want to move out because it is hard to find a place to rent or buy in the area.

In reply, the Landlord, Ms. SS testified that they will be completing repairs to the unit. She testified that the Tenant complained about the condition of the unit and the issues will require vacant possession.

The Landlords agent Mr. PS testified that he has not actually seen the condition of the unit, however, going by the complaint of the Tenant the flooring will have to come out and the shower needs to be replaced.

Analysis

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.

Section 32 of the Act provides that a Landlord must provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, makes it suitable for occupation by a Tenant.

I find that the Landlord had another motive for issuing the 2 Month Notice. The Landlord is intending to repair the rental unit. The Landlord did not select that they are repairing the unit and they require vacant possession as a reason to end the tenancy.

It appears to me that some of the repairs being contemplated would be the responsibility of the Landlord pursuant to section 32 of the Act. The Landlord has an obligation to maintain the residential property.

I find that the 2 Month Notice To End Tenancy For Landlord's Use Of Property dated February 10, 2018, was not issued in good faith.

Therefore, I set aside the 2 Month Notice to End Tenancy For Landlord's Use Of Property dated February 10, 2018.

I order the tenancy to continue until ended in accordance with the Act.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Tenant was successful with her application, I order the Landlord to repay the \$100.00 fee that the Tenant paid to make application for dispute resolution. I authorize the Tenant to withhold \$100.00 from one (1) future rent payment.

The Tenant has leave to reapply for dispute resolution for a repair order for the rental unit.

Conclusion

The Tenants' Application is successful. The 2 Month Notice To End Tenancy For Landlord's Use Of Property dated February 10, 2018, is cancelled.

The Landlord issued the 2 Month Notice for another purpose or motive.

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

I authorize the Tenant to withhold \$100.00 from one (1) future rent payment.

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: May 2, 2018

Residential Tenancy Branch