



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, RP, ERP, LAC, OLC

Introduction

The tenant applies to cancel a two month Notice to End Tenancy for landlord use of property received March 14, 2018. The Notice claims that the landlord or a close family member intends to occupy the rental unit.

The tenant also seeks an order for compliance with previous order, rendered February 19, 2018 (file number shown on cover page of this decision) whereunder the landlord was ordered to make the existing laundry facilities available to the tenant, to take part in a mold and a stove inspection and attend to any required repairs or remediation.

This matter has been set for an expedited hearing because the tenant is challenging the Notice. The other matters claimed are “unrelated” within the meaning of Rule 2.3 of the Rules of Procedure and are not to be brought with the main application. As well, it would appear that the landlord received the tenant’s evidence in support of his application only on April 29, four days before the hearing and not in compliance with Rule 3.14 requiring an applicant to file and serve no less than 14 days before a hearing. For these reasons I exercise my discretion to dismiss the tenant’s application but for his challenge to the two month Notice, and I grant him leave to re-apply.

It appears that the landlord has issued a one month Notice to End Tenancy for cause, the tenant has disputed it and a hearing date has been set for June 19, 2018. The parties should consult the Residential Tenancy Branch about the efficacy of having any re-application brought by the tenant heard at the same time.

It should be noted that the February 19, 2018 decision imposes certain compliance orders on the landlord and tenant. The parties should be aware of the provisions of Part 5.1 of the *Residential Tenancy Act* (the “Act”) which gives the Director the power to impose heavy, daily fines for non-compliance with the order of an arbitrator acting under her authority.

The tenant and his wife attended the hearing. The landlord's daughter Ms. A.G. attended to represent her mother. They were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Is the two month Notice to End Tenancy a valid Notice in compliance with the law?

Background and Evidence

The rental unit is a two bedroom structure attached to the landlord's house. The landlord and her family live in the house.

There is no written tenancy agreement. The tenancy started around December 2013. The parties appear to agree that the monthly rent is \$746.95, due on the 15th of each month. The landlord holds a \$350.00 security deposit.

Ms. A.G. testifies that it is intended that her sister and brother, both young adults, are to live in the rental unit. They are both presently living in the house portion on the property. She says her sister is disabled and is worried about being assaulted by the tenant or his family. The rental unit would offer them a "proper" cooking area and bathroom. She says the landlord wants to enjoy the property without tenant interference. She also mentions the prospect of renovating but did not indicate which residence.

The tenant Mr. B. testifies that the landlord's home is four bedrooms with two bathrooms and that the landlord rents out another rental unit in another building on the property.

Analysis

Section 49 of the *Act* permits a landlord to end a tenancy on two months' notice where the landlord has a good faith intention to have herself or a close family member occupy the rental unit.

It is apparent from the previous decision and the testimony at this hearing that the parties are engaged in a heated dispute. The landlord thinks the tenants are operating a business from their rental unit and that customers, strangers, are idly wandering onto

the property and pose a risk. "No trespassing" signs have been posted. The tenant has been successful in attacking significant rent increases the landlord imposed over the last two years. The previous arbitrator found that the landlord was not carrying out her statutory and contractual duties to these tenants.

Ms. A.G. makes it clear that the reason her brother and sister are intending to occupy the rental unit because the landlord wants to enjoy the property without tenant interference.

The preponderance of probabilities leads me to the conclusion that an essential part of the landlord's decision to issue the two month Notice is to end the conflict and strife being experienced with the present tenants. That is not a good faith intention as required by s. 49 of the *Act*. It is an attempt by indirect means to evict the tenant for conduct. The parties will have it determined whether or not the tenant's conduct has been such as to justify eviction at the June hearing challenging the one month Notice to End Tenancy for cause.

Conclusion

The two month Notice to End Tenancy received March 14, 2018 is hereby cancelled.

The tenant's application is allowed in that regard. I award the tenant recovery of the \$100.00 filing fee paid to bring this matter to hearing. I authorize the tenant to reduce his next rent due by \$100.00, in full satisfaction of the fee.

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 07, 2018

Residential Tenancy Branch