



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC CNL CNR

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 46;
- cancellation of the landlord's One Month Notice to End Tenancy for Cause (the One Month Notice) pursuant to section 47;
- cancellation of a Two Month Notice to End Tenancy For Landlord's Use of Rental Property (the Two Month Notice), pursuant to section 49;

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. No issues were raised with respect to service of the application and evidence on file.

The landlord confirmed that the tenants paid the outstanding rent within 5 days of receiving the 10 Day Notice so the landlord was only seeking an order of possession pursuant to the One Month Notice and Two Month Notice.

Issues

Should the landlord's One Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Should the landlord's Two Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Background & Evidence

The rental unit is an apartment in a 13 unit complex. The tenancy has been in place since December 1, 2009. The current landlord purchased the rental property in May 2017. The current monthly rent is \$738.00 and is payable on the 1st day of each month.

The landlord served the tenants with a 10 Day Notice, One Month Notice and Two Month Notice by posting copies to the tenants' door on February 28, 2018. The One Month Notice was issued on the grounds that the tenants are repeatedly late paying rent. The Two Month Notice was issued on the grounds that a close family member intends to occupy the rental unit and the landlord intends to convert the rental unit for use by a caretaker or manager.

One Month Notice

The landlord submits that as of May 2017 when the landlord purchased the rental property, the tenants have not made a single rent payment on time. The landlord submits that all rent payments have been made in cash for which receipts were issued to the tenants. The landlord did not keep a copy of the receipts but argues the tenants could have provided receipts. According to the landlord, the tenants would provide a piece of paper on which the landlord would acknowledge the rent payments and the tenants would keep the piece of paper. The landlord argues the tenants would often be several days sometimes even months late. The landlord submitted a spreadsheet containing dates of monthly rent payments made by the tenants. The landlords acknowledged that the dates of rent payments recorded in the spreadsheet may not be exactly accurate but generally were accurate. The landlord did not provide an explanation of how he came up with these dates. The landlord further submits that in addition to the 10 Day Notice issued on February 28, 2017 the tenants were also previously issued a 10 Day Notice back in October 2017.

The tenants submit that the first contact they had with the new landlord was by way of a letter they received June 3, 2017. The tenants submitted a copy of the letter as evidence. The tenants submit that this letter does not contain any address for service for the new landlord. The tenants submit that as per this letter, the only instruction on how to pay rent was a statement providing the landlord's contact phone number if they wanted to arrange for pickup or had any questions. In this first contact letter, the tenants were also advised to start looking for new accommodation as the landlord intended to renovate the building which would render it "uninhabitable". At the bottom of this letter was an example of a "make shift receipt" issued by the landlord. The tenants submit this was typical of the landlord's receipts and did not contain any dates only that

\$738.00 was received for June rent. The tenants submit this was the first time they met the landlord and even for this first month he picked up the rent late.

The tenants submit that the landlord then just stopped collecting rent and he was apparently out of the country. The landlord did not collect any rent for three months. The tenants then received a Notice to End Tenancy in October 2017. They were the only tenants that received an eviction Notice as most other occupants in the building just left and took a deal of a few months free rent in exchange for vacating so the landlord could renovate. The tenants submit that they paid the back rent after receiving the 10 Day Notice as they did not want to vacate the rental unit. The tenants submit that they have since had to chase down the landlord to make rent payments. They did not submit any receipts as evidence as very few of them have any dates on them so they would not have helped.

In reply, the landlord submits that under the Act, the tenants have the obligation to pay rent when it is due. It is not upon the landlord to pick-up the rent when it is due and there are many other methods by which the tenants could have paid rent.

Two Month Notice

The landlord submits that it is his intent to have his daughter, who has just completed her degree in marketing, to take over the family business. The intent is for his daughter to occupy the rental unit as a caretaker/manager. The landlord owns other rental properties as well which his daughter would also manage.

The tenants are disputing the Two Month Notice on the grounds that it was not issued in good faith. The tenants' question why it is their unit the landlord's daughter intends to occupy when all other suites are vacant and have been fully renovated. The tenants submit that all other occupants of the building vacated in exchange for a few months free rent and the landlord has since renovated all the other suites in the building. The tenants submit the landlord has not offered to relocate them into one of the empty suites and that the landlord just wants them to vacate so he can renovate their suite as well. The tenants submit that the landlord put them on notice of his intentions to renovate since taking over ownership of the building.

In reply, the landlord submits that two of the other twelve units are currently occupied by "associates" of the landlord. The other remaining ten units are all still unoccupied but have all been "spoken for". The landlord acknowledges that he does intend to "clean-up" the suite before his daughter moves in.

Analysis

One Month Notice

Section 47 of the Act contains provisions by which a landlord may end a tenancy for cause by giving notice to end tenancy. Pursuant to section 47(4) of the Act, a tenant may dispute a One Month Notice by making an application for dispute resolution within ten days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the One Month Notice.

In this case, the landlord issued the One Month Notice pursuant to paragraph 47(1)(b) of the Act, which permits a landlord to terminate a tenancy if the tenant has been repeatedly late paying rent.

Pursuant to section 26 of the Act, the tenant has the obligation to pay rent when it is due under the tenancy agreement. Although a written tenancy agreement was not provided by either party, the parties agreed that rent is due on the first day of each month.

Although the obligation is on the tenants to pay rent when it is due, I find that at the time of taking over the rental property, the landlord failed to provide proper instructions to the tenants with respect to how rent was to be paid to the new landlord. The landlord did not provide any address of service or any other available options to pay rent such as e-transfer. Rather, the initial letter from the landlord to the tenants confirms the tenants' position that contacting the landlord to arrange the pick-up of rent was the only method of payment established. Further, I find that the evidence supports that it was the landlord who was difficult to contact and was not very concerned with collecting rent payments. The landlord's own payment ledger supports that no rent was collected for the months of August, September and October 2017 until October 17, 2017. There was no evidence that the landlord contacted the tenants at all over this period to inquire about rent payments until issuing a 10 Day Notice sometime in October 2017. The landlord did not issue this first 10 Day Notice until approximately 2 ½ months after the rent due date of August 1, 2017.

In the unique circumstances of this case, I find that the landlord did not have cause to issue the One Month Notice on the grounds of repeated late payments.

Two Month Notice

Section 49 of the Act contains provisions by which a landlord may end a tenancy for landlord's use of property by giving notice to end tenancy. Pursuant to section 49(8) of the Act, a tenant may dispute a Two Month Notice by making an application for dispute resolution within fifteen days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the Two Month Notice.

Further, Two Month Notices have a good faith requirement. *Residential Tenancy Policy Guideline #2* "Good Faith Requirement when Ending a Tenancy" provides the following guidance:

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.

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.

The evidence supports a finding that the landlord does not have a good faith intention to utilize the rental unit for his daughter to take over as a caretaker/manager of the building. The very first contact letter from the landlord provided into evidence by the tenants, demonstrates that the landlord's intent from the beginning was to renovate the entire building. The landlord has since proceeded to obtain vacant possession of the entire building with the exception of the tenant's suite. The landlord has also since renovated the other 12 units in the building. The landlord provided no explanation for why any of these other 12 units could not have been utilized by his daughter for use as a caretaker/manager prior to them becoming "spoken for" or utilized by the landlord's "associates".

I find that there is sufficient evidence of an ulterior motive to end the tenancy on the part of the landlord and the landlord does not have a good faith intention to use the rental unit for the purpose(s) stated in the Two Month Notice.

Conclusion

I allow the tenants' application to cancel the landlord's One Month Notice, dated February 28, 2018, which is hereby cancelled and of no force or effect.

I allow the tenants' application to cancel the landlord's Two Month Notice, dated February 28, 2018, which is hereby cancelled and of no force or effect.

This tenancy continues until it is 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: May 18, 2018

Residential Tenancy Branch