



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, RP, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking an order cancelling a notice to end the tenancy for landlord's use of property; for an order that the landlord make repairs to the unit, site or property; and to recover the filing fee from the landlord for the cost of this application.

One of the tenants and the landlord attended the hearing, and each gave affirmed testimony. The parties were given the opportunity to question each other and give submissions. The parties agreed that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established that the Two Month Notice to End Tenancy for Landlord's Use of Property was issued in good faith and in accordance with the *Residential Tenancy Act*?
- Has the tenant established that the landlord should be ordered to make repairs to the hood fan in the kitchen?

Background and Evidence

The landlord testified that this fixed term tenancy began on December 1, 2015 and reverted to a month-to-month tenancy after 12 months, and the tenants still reside in the rental unit. Rent in the amount of \$1,600.00 per month was payable at the beginning of the tenancy, due on the 1st day of each month, and was raised twice during the tenancy in accordance with the *Residential Tenancy Act*. The current rent is \$1,725.00 per month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$800.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment in a complex. A copy of the tenancy agreement has not been provided as evidence for this hearing by either party.

The landlord further testified that he is currently residing with his parents, and has been since the beginning of this tenancy in 2015. The landlord's parents are elderly and they want him to move out as soon as possible. The landlord's hours of work sometimes require overtime and not returning home until 1:00 or 2:00 a.m. which disturbs them, and the landlord promised he would move out. The landlord does not own any other properties.

The landlord served the tenants with a Two Month Notice to End Tenancy for Landlord's Use of Property on March 27, 2018 by posting it to the door of the rental unit. The landlord believes he served all 3 pages, however a copy of the first page only has been provided as evidence for this hearing. It is dated March 27, 2018 and contains an effective date of vacancy of June 1, 2018.

With respect to the tenant's application for repair to the hood fan, the landlord testified that he has a replacement fan and intends to install it, however scheduling a date and time with the tenants has not yet resulted in scheduling.

The tenant testified that the Two Month Notice to End Tenancy for Landlord's Use of Property was served March 27, 2018 by posting it to the door of the rental unit, and believes there were 2 pages.

The tenant also testified that the landlord has been living in the same place that he lived at when this tenancy began, and the tenant does not believe the landlord is moving into the rental unit.

The tenant has been looking for a place to rent, but the rental amounts are about \$500.00 per month more expensive, and the landlord knows that he could rent it for a greater amount. After the tenants told the landlord about the hood fan, the landlord served the Two Month Notice to End Tenancy for Landlord's Use of Property. The tenants question the good faith intent of the landlord to use the rental unit for the purpose contained in the notice.

Analysis

I accept the testimony of the landlord that his parents want him to move out and he intends to move into the rental unit. I have reviewed the emails and other evidentiary material and the only evidence contrary to that is the testimony of the tenant that the landlord could charge more rent than the tenants are currently paying, and that the landlord issued the notice to end the tenancy after repairs were requested. That belief is not enough to satisfy me that the landlord does not have good faith intent. The

Residential Tenancy Act permits a landlord to end a periodic tenancy if the landlord has good faith intent to use the rental unit for the purpose contained in a Two Month Notice to End Tenancy for Landlord's Use of Property. I accept the testimony that he does intend to occupy it, and I dismiss the tenants' application for an order cancelling the notice.

The *Residential Tenancy Act* states that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an Order of Possession in favour of the landlord, so long as the notice given is in the approved form. No one has provided me with a copy of the entire form served, so I cannot be satisfied that it is in the approved form, and I decline to issue an Order of Possession.

The landlord does not disagree with the repair requested to the kitchen hood fan, and I order the landlord to have it repaired or replaced within 1 week of today's date, and if a date cannot be arranged by mutual consent by that date, the landlord must give notice to enter the rental unit in accordance with Section 29 of the *Residential Tenancy Act*.

The primary application in this matter is the notice to end the tenancy, and the parties agreed with respect to the application regarding repairs. Having dismissed the primary application, I decline to order that the tenants recover the filing fee.

Conclusion

For the reasons set out above, I hereby order the landlord to make the repair to or replace the hood fan in the kitchen within 1 week of today's date. If the parties cannot find a mutually agreeable date for that, the landlord must give notice to the tenants in accordance with Section 29 of the *Residential Tenancy Act*.

The balance of the tenants' application is hereby dismissed.

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 17, 2018

Residential Tenancy Branch