



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL MNDC OLC RP

Introduction

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

- cancellation of a 2 Month Notice to End Tenancy For Landlord's Use of Rental Property, pursuant to section 49;
- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 32;

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.

Preliminary Issue – Scope of Application

Residential Tenancy Branch Rules of Procedure, Rule 2.3 states that, if, in the course of the dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

Aside from the issue of whether or not the landlord had grounds to issue the Notice to End Tenancy, I am exercising my discretion to dismiss the remainder of the issues identified in the tenants' application with leave to reapply as these matters are not related. Leave to reapply is not an extension of any applicable time limit.

Issues

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Background & Evidence

The rental unit is a bachelor suite in a residential house. The tenancy began on March 20, 2016. The current monthly rent is \$350.00 and is payable on the 1st day of each month.

The landlord served the tenant with a 2 Month Notice on February 23, 2018. The effective date of the 2 Month Notice is April 30, 2018.

The landlord's daughter-in-law represented the landlord in this hearing and submits that the landlord intends for her son to occupy the rental unit to help care for his ill father. The landlord submitted a medical certificate in support of the father's medical condition. The landlord's representative testified that the landlord's son and herself would be moving into the bachelor suite and their two children would also move with them but reside in an extra bedroom upstairs.

The tenant is disputing the 2 Month Notice on the grounds that it was not issued in good faith. The tenant testified that the parties have been through a few previous hearings in regards to the tenant's applications for repairs to the rental unit and one previous attempt by the landlord to end this tenancy for landlord's use of the property. The tenant testified that the previous 2 Month Notice was cancelled as that time the landlord argued that she wanted to have her "grandchild" occupy the rental unit. The tenant further submits that in other previous decisions, the landlord was ordered to make various repairs to the rental unit and the tenant was also granted a monetary award which has since been paid in full by the landlord. The tenant further submits that her copy of the 2 Month Notice which she submitted as evidence did not have a reason checked off on the back of the Notice.

The landlord submitted a copy of the 2 Month Notice and argues that the reason for ending the tenancy was checked off on her copy.

Analysis

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 2 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 2 Month Notice.

Further, 2 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.

Regardless of whether or not the 2 Month Notice in question had the reason for ending the tenancy checked off, I find that the landlord does not have a good faith intention to utilize the rental unit for occupation by the landlord's son and daughter-in-law. I make this finding based on the history of disputes between these parties and previous decisions in respect to those disputes which are summarized below (file numbers for each of these decisions are referenced on the cover page of this decision):

February 1, 2017 – The landlord is ordered to make various repairs to the rental unit and make those repairs within 8 weeks of this decision.

May 8, 2017 – The tenant's application to cancel a 2 Month Notice dated March 31, 2017 is successful as the landlord indicated the rental unit was to be occupied by a “grandchild” which does not fall under the definition of a “family member” under the Act.

January 18, 2018 – The landlord is again ordered to make various repairs to the rental unit and the Arbitrator finds the landlord failed to comply with the previous repair orders. The tenant is awarded monetary compensation in the amount of \$1550.00 comprised of a rent reduction for the landlord's failure to make the previously ordered repairs and for loss of quiet enjoyment.

February 23, 2018 – Landlord issues second 2 Month Notice which is the subject of this dispute.

Based on the history of disputes between the parties as summarized above, I find that there is sufficient evidence of an ulterior motive to end the tenancy on the part of the

landlord. The landlord has failed to establish that she does not have an ulterior motive for ending the tenancy and that she truly intends to use the rental unit for the purpose stated in the Notice. I find it to be more than just a mere coincidence that the landlord issued the first 2 Month Notice within two months of the first decision issued with respect to the tenant's request for repairs and now has issued a second 2 Month Notice again only a little over one month after the tenant being awarded monetary compensation for the landlord's failure to make the repairs. I also find it to be questionable that only a year previous the landlord intended to have her grandchild occupy the rental unit and now the landlord submits she intends for her son to occupy the rental unit.

Conclusion

I allow the tenant's application to cancel the landlord's 2 Month Notice, dated February 23, 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 23, 2018

Residential Tenancy Branch