



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for landlord's use of property.

The tenant and the landlord attended the hearing and the landlord was accompanied by a person to translate. The parties each gave affirmed testimony, and the landlord's translator was affirmed to well and truly interpret the hearing from the English language to the landlord's Native language and from the landlord's Native language to the English language to the best of the interpreter's skill and ability. The parties were also given the opportunity to question each other and give submissions.

At the commencement of the hearing the tenant advised that the landlord had not provided evidentiary material to the tenant. The landlord advised that a doctor note and a Notice of Dispute Resolution Proceeding were served to the tenant along with his mail on May 29, 2018, 2 days before the landlord left the country for a visit. However, the landlord has filed a letter signed by a doctor and an Application for Dispute Resolution as well as another letter. The documents uploaded by the landlord don't quite match up with the landlord's testimony, and I cannot be certain what if anything was provided to the tenant, and I decline to consider the landlord's evidentiary material.

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 accordance with the *Residential Tenancy Act* and in good faith?

Background and Evidence

The landlord testified that this month-to-month tenancy began on May 1, 2013 and the tenant still resides in the rental unit. Rent in the amount of \$1,648.00 per month is currently payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$600.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The parties did not sign a written tenancy agreement.

The rental unit is the upper level of the landlord's home, and the landlord's son and husband passed away. The landlord moved from the upper level to a 1 bedroom suite in the lower level due to financial problems. The landlord's son and family with 2 children are moving into the rental property to assist the landlord financially and mentally, and there's not enough room in the suite the landlord currently resides in for the family. Another suite in the lower level is also tenanted, but only has 2 bedrooms. The landlord's son is currently renting and will give notice to end his tenancy as soon as this tenancy ends.

Rent was \$1,225.00 per month at the beginning of the tenancy and there were no increases for a year. When the landlord told the tenant to move out, the tenant voluntarily increased the rent to \$1,600.00 per month so that the landlord wouldn't ask him to move. Then a year later rent went up to \$1,648.00 per month. The landlord gave 3 notices to move out over a 2 year period, but the tenant kept bargaining with more rent to be able to stay. The landlord's son has not given notice to move out of his place because this has been going on for 2 years. The landlord accepted the increase in rent but told the tenant he still has to look for another place to move to.

The landlord further testified that on April 10, 2018 the landlord posted a Two Month Notice to End Tenancy for Landlord's Use of Property to the door of the rental unit, and a copy has been provided as evidence for this hearing. It is dated April 10, 2018 and contains an effective date of vacancy of June 30, 2018. The reason for issuing it states: "The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse."

The tenant testified that he needs to live in the rental unit because it's close to the school of the tenant's children.

The main issue that the landlord has is the amount of rent. The landlord says it's too low, and the tenant does not believe the landlord's son and family will be moving in. The landlord told the tenant that her son lives in his own house without a mortgage.

Rent was \$1,225.00 per month at the beginning of the tenancy and the landlord and her son attended the rental unit knocking loudly on the door several times, and there was a dispute. They asked the tenant to increase the monthly rental amount or move out. They also yelled at the tenant on the street. Last summer, the tenant agreed to increase the rent to \$1,600.00 per month, and after a few months they said it wasn't enough and the tenant started paying \$1,648.00 per month. The landlord did not serve notice of a rent increase.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. Also, in the case of a Two Month Notice to End Tenancy for Landlord's Use of Property, the landlord must be able to demonstrate good faith intent to use the rental unit for the purpose contained in the Notice.

In this case, the landlord is currently residing in a 1 bedroom basement suite in the landlord's home, another 2 bedroom basement suite is currently tenanted, and the tenant in this dispute resides in a 3 bedroom unit on the upper level. The landlord, who has lost a son and her husband, testified that another son and his family will be moving into the rental unit with the landlord to assist the landlord financially and mentally. The tenant testified that it's all about how much rent he pays, but I don't accept that. I find the landlord's testimony to be truthful with respect to the tenant increasing the rent voluntarily to hopefully be able to remain in the rental home.

I have reviewed the Two Month Notice to End Tenancy for Landlord's Use of Property and I find that it is in an old approved form but contains and conveys the same required information as the newer approved form.

In the circumstances, I am satisfied that the Notice was given in accordance with the *Residential Tenancy Act* and in good faith, and the tenant's application to cancel it is dismissed.

The *Residential Tenancy Act* also 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. Having found that the form is not invalid, I grant an Order of Possession in favour of the landlord effective June 30, 2018 at 1:00 p.m.

The landlord is required to pay to the tenant compensation equal to 1 month's rent. If the landlord does not use the rental unit for the purpose contained in the Two Month Notice to End Tenancy for Landlord's Use of Property dated April 10, 2018, the landlord may be liable to the tenant for an additional 2 month's rent.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed.

I hereby grant an Order of Possession in favour of the landlord effective at 1:00 p.m. on June 30, 2018.

This order is final and binding and may be enforced.

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: June 27, 2018

Residential Tenancy Branch