



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNL, FFT

Introduction

On April 30, 2018, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* ("the Act") requesting the following relief:

- For more time to make an application to cancel a notice to end tenancy.
- to cancel a 2 Month Notice to End Tenancy for Landlord Use of Property dated March 28, 2018.
- to recover the filing fee for the Application.

The matter was set for a conference call hearing. Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence, orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Issues

The Tenant applied for more time to make application to dispute the 2 Month Notice To End Tenancy For Landlord's Use Of Property dated March 28, 2018. The Tenant disputed the 2 Month Notice on May 7, 2018.

Section 66 of the Act addresses extensions to time limits established by the Act. This section provides that the director may extend a time limit established by this Act only in exceptional circumstances. The director must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice.

The Tenant testified that she believed she had reached an agreement that the tenancy would continue for a few more months. She testified that she had conversations with the Landlord on March 29th and 30th about renewing the tenancy. She submitted that the Landlord proposed a

three month lease to end on July 1, 2018 with a move out clause for Landlord use of property. The Tenant provided an image of the proposed lease she received from the Landlord.

The Tenant testified that negotiations continued with the Landlord regarding the terms and conditions of a new lease and that the parties agreed on a new lease verbally. She submitted that she asked for the lease on numerous occasions, but the Landlord did not present her with the lease documents until April 26, 2018. She submitted the terms were not what they had agreed to verbally.

In reply, the Landlords counsel submitted that the conversations between the parties regarding a new fixed term lease never resulted in an agreement. He submitted that the Tenant did not dispute the Notice in time.

I find that it would be very confusing for a Tenant who has just received a 2 month Notice to be in a position where a Landlord is negotiating a new fixed term tenancy the day after a notice to end tenancy was issued. I find that the parties were negotiating that the tenancy may continue. It is reasonable to accept that the Tenant believed that an agreement would be reached and that the tenancy would continue. Any agreement reached would render the 2 Month Notice void. In these circumstances, I find that the Tenant's late dispute of the 2 Month notice is an exceptional circumstance.

I grant the Tenant's request for additional time to dispute the 2 Month Notice To End Tenancy For Landlord's Use Of Property dated March 28, 2018.

Issues to be Decided

- Is there sufficient reason to end the tenancy based on the 2 Month Notice To End Tenancy For Landlord's Use Of Property dated March 28, 2018?
- Is the Tenant entitled to recover the cost of the filing fee?

Background and Evidence

The Landlord and Tenant testified that the tenancy began on March 1, 2018, as a three month fixed term tenancy that continued thereafter on a month to month basis. Rent in the amount of \$1,200.00 is to be paid to the Landlord by the first day of each month. The Tenant was not required to pay a security deposit or pet damage deposit.

The Tenant testified that she received a 2 Month Notice To End Tenancy For Landlord's Use Of Property on March 28, 2018 ("the 2 Month Notice"). The 2 Month Notice contains one reason for ending the tenancy:

- The rental unit will be occupied by the Landlord or the Landlord's spouse or a close family member of the Landlord or the Landlord's spouse.

The burden to support the reason to end the tenancy rests with the Landlord. The Landlord's counsel testified that the Landlord's son and grandson are moving into the rental unit. He submitted that they are in need of a place to live due to a family crisis.

The Landlord's counsel referred to documentary evidence provided by the Landlord. The Landlord provided a letter from Mr. JJ dated May 20, 2018, which states that he intends to occupy his parents' garage suite along with his son on or before July 1, 2018. The letter states that he was made aware in early March 2018, that it would become available for him to live in by this July, as the renter was given notice to leave.

The Landlord's counsel referred to documentary evidence provided by the Landlord. The Landlord provided a letter dated May 22, 2018, from Mr. DB that indicates the Landlord informed him on March 28, 2018 that his son was the reason he was giving his renter notice to move out.

The Landlords counsel submitted that the Landlord's wife Ms. KC does not have the authority to act as the Landlord.

The Tenant submitted that prior to entering into a tenancy she was invited by Ms. KC to come view the rental suite.

The Tenant submitted that the garage below her unit was not for her use; however, over time the Landlord gave her access to a portion of the garage for storage. The Tenant submitted that the Landlord later said he didn't remember agreeing that the Tenant could use the space.

The Tenant submitted that the Landlord did not issue the 2 Month Notice in good faith.

The Tenant submitted that when the Landlord served the 2 Month Notice he said he wants to renovate the garage below where the Tenant lives and turn it into living space.

The Tenant testified that after she received the 2 Month Notice, she had conversations with the Landlord on March 29th and 30^h about renewing the tenancy. She submitted that the Landlord proposed a three month lease. The Tenant provided an image of the proposed lease and testified that the Landlord created the lease document.

The Tenant testified that she had discussions with Ms. KC regarding the tenancy and extending the lease. She testified that Ms. KC brought the lease extension document that was prepared

by the Landlord to her for to sign. The Tenant provided a copy of text messages between the parties where Ms. KC asks if the Tenant is still going to sign the 3 month lease document.

The Tenant submitted that she asked for the lease agreement on multiple occasions but the Landlord did not deliver it until April 26, 2018. The Tenant provided a copy of text messages between the parties where Ms. KC states the lease will be dropped off for signature.

The Tenant testified that she was not comfortable with the changed terms of the lease so no agreement was reached at that time.

The Tenant submitted that the Landlord did not issue a 2 month notice for the reason of renovation and she feels the Landlord is manipulating the system to end her tenancy.

The Tenant testified that when she spoke to the Landlord's wife, Ms. KC, she informed the Tenant that the Landlord's son is not moving in, he will just be visiting on occasion.

In reply, the Landlord's counsel submitted that the conversations between the parties regarding new fixed term lease never resulted in an agreement.

Analysis

The Act defines "landlord", in relation to a rental unit, includes:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement, or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;

Residential Tenancy Policy Guideline # 2 Ending a Tenancy: Landlord's Use of Property addresses the requirements for ending a tenancy for landlord's use of property and the good faith requirement. The Guideline provides that the Act allows a Landlord to end a tenancy under section 49, if the Landlord intends, in good faith, to move into the rental unit, or allow a close family member to move into the unit.

The Guideline explains the concept of good faith:

"Good faith is a legal concept, and means that a party is acting honestly when doing what they say they are going to do or are required to do under legislation or a tenancy agreement. It also means there is no intent to defraud, act dishonestly or avoid obligations under the legislation or the tenancy agreement."

...

"If a tenant claims that the landlord is not acting in good faith, the tenant may substantiate that claim with evidence. For example, if a tenant does not believe a landlord intends to have a close family member move into the rental unit, an advertisement for the rental unit may raise a question of whether the landlord has a dishonest purpose for ending the tenancy.

If the good faith intent of the landlord is called into question, the onus is on the landlord to establish that they truly intended to do what they said on the notice to end tenancy. The landlord must also establish that they do not have another purpose or an ulterior motive for ending the tenancy."

Based on the above, the testimony and evidence of the parties, and on a balance of probabilities, I find as follows:

I find that Ms. KC, meets the definition of "Landlord". I find that Ms. KC was exercising powers and performing duties under the Act, and the tenancy agreement. I accept the Tenant's evidence that Ms. KC brought the proposed lease to the Tenant to sign. I find that Ms. KC is the Landlord or acted as an agent for the Landlord.

I have considered whether or not the Landlord had an intention to defraud, act dishonestly, or avoid obligations under the Act or tenancy agreement.

The letter from the Landlord's son states that he was made aware in early March 2018, that the unit would become available for him to live in by this July, as the renter was given notice to leave. I find that the letter from the Landlord's son is not entirely reliable evidence because the Landlord never gave the Tenant the 2 Month Notice in early March. The 2 Month Notice was issued on March 28, 2018.

I have also considered the Tenant's submission that the Landlord told the Tenant that his reason for ending the tenancy was to renovate the garage area into a rancher style home. The Landlord's wife, who I find was acting as a Landlord, is reported to have said to the Tenant that the Landlord's son will not be moving into the rental unit.

Furthermore, I find that the parties engaged in conversations to enter into a new fixed term tenancy agreement on March 29th and 30th. The Landlord submitted that these conversations were never crystalized. I find that the Landlord's willingness to engage in such conversations a day after issuing the 2 Month Notice, and by delivering the new lease to the Tenant puts doubt in my mind on his true intention and purpose at the time of issuing the 2 Month Notice.

I find that there is insufficient evidence from the Landlord to establish a good faith intention to use the rental unit for the purpose set out in the 2 Month Notice. The 2 Month Notice To End Tenancy For Landlord's Use Of Property dated March 28, 2018, is set aside.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. The Tenant was successful with her application. I authorize the Tenants to deduct the amount of \$100.00 from one (1) future rent payment.

The tenancy will continue until ended in accordance with the Act.

Conclusion

The Tenants' application to cancel the 2 Month Notice To End Tenancy For Landlord's Use Of Property dated March 28, 2018, is successful. The Tenant is authorized to deduct \$100.00 from one (1) future rent payment.

The tenancy will continue until 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: July 09, 2018

Residential Tenancy Branch