



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49.

Both parties attended the hearing. While the parties reported some static on the phone lines, they were able to make themselves heard and given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As both parties were present service of documents was confirmed. The tenant testified that they were served with the landlord's 2 Month Notice and evidence and the landlord confirmed they were served with the tenant's application for dispute resolution and evidence. Based on the undisputed testimonies I find that the parties were served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Should the 2 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Background and Evidence

The parties agreed on the following facts. This tenancy began approximately 12 years ago. The landlord assumed responsibilities in 2017. There are 15 units in the rental building. The current monthly rent is \$493.00 payable on the first of each month.

There was a previous hearing on March 28, 2018 under the file number on the first page of this decision dealing with the tenant's application for a reduction in rent for services or facilities agreed upon but not provided. A one-time monetary award in the tenant's favour was granted.

The landlord issued the 2 Month Notice on or about May 1, 2018. The reason provided on the notice for the tenancy to end is that the landlord intends to convert the rental unit for use by a caretaker, manager or superintendent of the residential property.

The landlord testified that both the named landlord and the landlord's witness intend to use the rental unit as an office, for living quarters and to operate out of while performing renovations and repairs to the rental building. The landlord said that an on-site base is necessary for the scope of work they are intending to perform. The landlord testified that the rental unit is the most appropriate given the size and condition of the unit. The landlord said that the 2 Month Notice was issued so as to allow the tenant to vacate the rental unit during the summer months. The landlord testified that the issuance of the 2 Month Notice is wholly unrelated to their relationship with the tenant and the outcome of any previous dispute hearings.

The landlord submitted into written evidence copies of invoices for hotel stays showing their expenses when performing their landlord duties in the community. They submitted photographs showing the basement of the rental unit being used as storage. The landlord explained that it is not feasible to operate out of the basement storage.

The tenant questioned the timing of the 2 Month Notice and said they believe it to be retaliatory. The tenant said that they were granted a monetary award in a previous hearing in March, 2018 and that there have been ongoing issues with the landlord as they have made multiple repair requests. The tenant said that there are other units available in the rental building which would be more appropriate for the landlord to clean and use. The tenant submitted into evidence some screen shots of text messages between the landlord and the tenant's outreach worker.

Analysis

In order to evict a tenant for landlord's use of the property the landlord has the burden of proving the reasons on the Notice.

The tenant raised the issue of the intention of the landlord and their confidence in the plan the landlord says they have; what I found was essentially a good faith argument.

Residential Tenancy Branch Policy Guideline number 2 notes that good faith is an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage. 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.

This Guideline reads in part as follows:

If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End 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 tenant has raised the good faith intention of the landlord which I find has some basis. The timing of the 2 Month Notice so promptly after an earlier dispute resolution hearing raises some natural doubts about the bona fide intentions of the landlord. While the landlord provided some explanations about the reason for issuing the Notice and how the rental unit was selected I find that I am not wholly convinced that there are no other factors which have given rise to the Notice.

While I accept that the landlord intends to use the rental unit for use by the landlord and building caretaker, I find based on the testimony of the parties that there have been a number of difficult interactions between the parties recently. The parties both testified that the tenant has made numerous requests for services and repairs to the rental unit. The tenant testified that they were granted a monetary award at a previous dispute resolution hearing but feel that not all issues have been adequately addressed.

I find that while the landlord may intend to use the rental unit for the purposes stated on the 2 Month Notice, that there may be additional reasons which fueled the issuance of the Notice. Therefore, I find that the good faith argument has some merit as I find that there are reasonable doubts about the intention of the landlord to end this tenancy.

Therefore, the 2 Month Notice is cancelled. This tenancy will continue until it is ended in accordance with the Act.

Conclusion

The tenant's application to cancel the 2 Month Notice is allowed. The 2 Month Notice is of no continuing force or effect. This tenancy will continue until ended according to 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 9, 2018

Residential Tenancy Branch