



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, FFL, CNL

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*).

The landlord applied for:

- An order of possession pursuant to section 55; and
- Authorization to recover the filing fee from the tenant pursuant to section 72.

The tenant applied for:

- Cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use (the "2 Month Notice") pursuant to section 49.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As both parties were present service was confirmed. The parties each confirmed receipt of the other's application for dispute resolution and evidentiary materials. Based on the undisputed testimony I find that the parties were each 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?

Is the landlord entitled to recover the filing fee for the application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here. The principal aspects of the parties' claims and my findings around each are set out below.

This tenancy began sometime in 2014. The monthly rent is \$550.00.

The landlord said that the rental unit is one of two units in a detached home owned by the landlord. The landlord said that their son resides in the other unit. The landlord said that the current monthly rent is \$550.00 paid by cheque issued to them from a government agency. The landlord said that they issued the 2 Month Notice as the landlord's father-in-law who currently resides in a separate rental building, received a notice from their landlord ending that tenancy. An affidavit from the father-in-law was submitted into evidence with a copy of the correspondence ending the tenancy as an exhibit.

The tenant disputes much of the landlord's evidence. The tenant submits that there are three units in the rental building. The tenant said that the landlord's son does not reside in the rental building and primarily lives elsewhere. The tenant said that rent payments are issued by the government agency by direct deposit and not by cheques.

The landlord testified that while the rental building is listed for sale they are merely testing the market and it does not influence their decision to have the landlord's father-in-law move into the rental unit.

The landlord's witness VS testified that he intends to occupy the rental unit currently being used by the landlord's father-in-law and that is the reason that tenancy is ending. The witness testified that they discussed the matter with the landlord's father-in-law and extended their tenancy until the outcome of this hearing was determined.

The tenant's witness AJ was a former tenant of the rental building and gave evidence about their experiences with the landlord. The witness testified that there are three rental units in the building, that the landlord's son does not occupy any unit in the building and that their tenancy was ended by the landlord for similar reasons.

Analysis

In order to evict a tenant for landlords' 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 his 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 merit. I find that much of the landlord's evidence to be questionable, with little credibility and without the ring of truth. I find the landlord's submission that they have listed the rental property for sale but that it will not affect their plan to have the father-in-law occupy the rental unit to be unconvincing. The landlord said that the house was listed to test the market without a genuine intention to sell. I do not find the submission to be at all credible or in line with what a reasonable person would do. While the landlord has submitted some documentary evidence of their intention to have the father-in-law occupy the rental unit and called witnesses to detail the circumstances that led to the issuance of the 2 Month Notice, I find that there is enough ambiguity that gives rise to a conclusion that there are other motives for ending this tenancy.

I find on a balance of probabilities that there is sufficient doubt regarding the intention and motivation of the landlord. Therefore, the 2 Month Notice is cancelled. The tenancy will continue until it is ended in accordance with the *Act*.

Conclusion

The landlord's application is dismissed without leave to reapply.

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 10, 2018

Residential Tenancy Branch