



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

On June 12, 2018, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) seeking to cancel a 2 Month Notice to End Tenancy for Landlord Use of Property, and 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 Matters

The Tenant testified that she sent the Notice of Dispute Resolution Proceeding and a copy of her documentary evidence to the Landlord at the address the Landlord provided within the 2 Month Notice to End Tenancy for Landlord’s Use of Property (“the 2 Month Notice”). The Tenant testified that on August 17, 2018, she sent the evidence using registered mail and the mail was returned to her as unclaimed. The Tenant provided the registered mail tracking information as proof of service.

The Landlord testified that he served the Tenant with a copy of his documentary evidence in person on September 30, 2018, two days prior to this hearing. The Landlord testified that he could not serve the evidence using registered mail or posting it

to the Tenant's door, because the evidence would not be deemed to be received by the Tenant prior to the hearing. The Landlord testified that he never received the Dispute Resolution Proceeding from the Tenant. The Landlord submitted that on September 24, 2018, he attended the Residential Tenancy Branch and received the Notice of Dispute Resolution Proceeding. The Landlord submitted that he tried to serve his documents earlier but the Tenant would not answer the door.

I find that the Tenant sent the Notice of Dispute Resolution Proceeding and evidence to the Landlord at the address provided by the Landlord. The documents were unclaimed. A Landlord or Tenant cannot intentionally avoid service of documents. The Tenant was disputing the Landlord's 2 Month Notice using the information provided by the Landlord. Pursuant to sections 89 and 90 of the Act, I find that the Landlord is deemed to have received the documents on the fifth day after they were mailed.

I find that the Landlord did not serve his documentary evidence to the Tenant in accordance with the Residential Tenancy Branch Rules of Procedure. The Tenant received the evidence two days before the hearing and testified that she did not have an opportunity to consider and respond to the Landlord's evidence. I find that the Landlord had an opportunity to post his evidence to the Tenant's door after he received the Notice of Dispute Resolution Proceeding documents on September 24, 2018. I find it would unfair to the Tenant to consider the Landlord's evidence, and for that reason the Landlord's evidence is excluded from the hearing.

The Landlord had an opportunity to provide direct testimony at the hearing.

Issues to be Decided

- Does the Landlord have the intention to move into the rental unit, or allow a close family member to move into the unit?
- Is the Landlord entitled to an order of possession?

Background and Evidence

The Landlord testified that he was recently a Tenant renting a unit when his tenancy ended due to receiving a notice to end tenancy from his Landlord.

The Landlord submitted that he needs a place to live so he decided to move into the rental unit involved in this dispute.

The Landlord issued the Tenant a 2 Month Notice To End Tenancy For Landlord's Use Of Property dated July 30, 2018. The reason the Landlord selected for ending the tenancy on the Notice is:

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

The 2 Month Notice provides information for Tenants who receive the Notice. The Notice states that a Tenant has the right to dispute the Notice within 15 days after it is assumed to be received by filing an Application for Dispute Resolution at the Residential Tenancy Branch.

The Tenant disputed the 2 Month Notice on August 13, 2018, within the required timeframe.

The Landlord submitted that he has ended the tenancy for the Tenants of both sides of the duplex property. The Landlord intends to move into the dispute address and his son will move into the other unit.

The Landlord submitted that he has another vacant rental property which is located next door to the property in dispute. He submitted that this neighboring unit is too small for him to live in and is to be sold.

In response to the Landlord's testimony, the Tenant testified that the Landlord issued the 2 Month Notice in bad faith. The Tenant testified that the parties have participated in previous hearings and there are four orders against him to perform repairs and renovations. The Tenant submitted that the Landlord is under threat of administrative penalties. The Tenant submitted that the Landlord has not done the renovations and the Landlord is trying to end the tenancy to avoid his obligations.

The Tenant provided the file numbers from previous dispute resolution hearing involving the parties.

The Landlord did not make any submissions in response to the Tenant's testimony regarding the repair orders made against him.

Analysis

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 have considered whether or not the Landlord had an intention to defraud, act dishonestly, or avoid obligations under the Act or tenancy agreement. I find that the parties have participated in previous dispute resolution hearings in 2017, and 2018. I find that the Landlord has been ordered by an Arbitrator to make repairs to the rental unit and progressive rent reductions have been awarded for failure to complete repairs as ordered.

I find that the Tenant has established that the Landlord is trying to avoid obligations to make repairs by attempting to end the tenancy.

I find that the Landlord did not issue the 2 Month Notice in good faith. The 2 Month Notice To End Tenancy For Landlord's Use Of Property dated July 30, 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 Tenant 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 Tenant's Application to cancel the 2 Month Notice To End Tenancy For Landlord's Use Of Property dated July 30, 2018, is granted. The 2 Month Notice is cancelled.

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: October 04, 2018

Residential Tenancy Branch