



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 an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the “Act”), to cancel Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Notice”) issued on November 1, 2018.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlords have the burden of proving sufficient evidence to terminate the tenancy for the reasons given on the Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Should the Notice be cancelled?

Background and Evidence

The parties agreed that the Notice was served on the tenant indicating that the tenant is required to vacate the rental unit on January 1, 2019. Since the Notice was issued on November 1, 2018, which is earlier than the Act allows that date automatically is corrected to January 31, 2019.

The reason stated in the Notice was that:

- The rental unit will occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse)

The landlords testified that their child will soon be getting married and they want to live in the basement unit.

The advocate for the tenant stated that the landlord stated to the tenant in a text message that they were going to be using both units in the basement; however, only the tenant was served with the Notice.

The advocate for the tenant stated that the tenant suffers from anxiety and other issues. The advocate stated it is very difficult to find living accommodations that are suitable and safe. The advocate stated if the tenancy must end that they are requesting additional time.

The landlord responded that they only need the one unit for their child to live in. The landlord stated that other tenants are a separate issue and will be dealt with at a later date. The landlord stated that they would be agreeable to extend the effective date of the Notice to February 28, 2019.

Analysis

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

How to end a tenancy is defined in Part 4 of the Act. Section 49(1) of the Act a landlord may end a tenancy by giving notice to end the tenancy.

I have considered all of the written and oral submissions submitted at this hearing, I find that the landlords have provided sufficient evidence to show that:

- The rental unit will occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse)

In this case the landlords want the rental unit for the landlord's child. I find that is not unreasonable. The landlord is entitled to issue the Notice to any unit they feel appropriate.

The tenant did not provide any evidence that leads me believe the landlords have an ulterior motive, such as increasing the rent.

I find the Notice issued on November 1, 2018, has been proven by the landlord and is valid and enforceable. The landlords were agreeable to extend the effective date of the Notice to February 28, 2019.

Therefore, I dismiss the tenant's application to cancel the Notice. The tenancy will end in accordance with the Act on February 28, 2019.

Since I have dismissed the tenant's application, I find that the landlords are entitled to an order of possession effective **February 28, 2019, at 1:00 P.M.** This order must be served on the tenants and may be filed in the Supreme Court.

The tenant is entitled to withhold rent for February 28, 2019, as that is compensation for the tenant receiving the Notice. The tenant is also entitled to end the tenancy earlier, upon giving the landlord ten (10) days' written notice, pursuant to the Act, should they find accommodation prior to that date. The tenant is still entitled to the equivalent of one (1) month rent.

Conclusion

The tenant's application to cancel the Notice, issued on November 1, 2018 is dismissed. The landlords are granted an order of possession

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: January 06, 2019

Residential Tenancy Branch