



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the Act) for:

- cancellation of the landlord's (the landlord's) 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49; and
- authorization to recover the filing fee for this application from the landlords pursuant to section 72.

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. The parties confirmed that they had exchanged their documentary evidence.

Issue(s) to be Decided

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

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

Background and Evidence

The landlords gave the following testimony. AA testified that the tenancy began on April 1, 2018. AA testified that the monthly rent is \$700.00 due on the first of the month and that the tenant provided a security deposit of \$375.00. The landlords issued a 2 Month Notice to End Tenancy on December 19, 2018 with an effective date of February 28, 2019. The landlords issued the notice on the following ground:

- *The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse...*

KA testified that the reason her husband is moving into the basement is due to marital issues. KA testified that she originally wanted to have the tenant sign a fixed term tenancy agreement but issues arose between her husband and her. KA testified that the tenants' allegation that they want to re-rent the unit at a higher rate is false. KA testified that even if they resolve their issues, there is no intention of renting the unit or being landlords again.

The tenant gave the following testimony. The tenant testified that he doesn't believe that the AA is moving into the unit. The tenant testified that he believes that the landlords want him to move out as a result of him not wanting to pay a higher rental rate. The tenant testified that he feels that the landlords have issued the notice in bad faith.

Analysis

When a landlord issues a notice to end tenancy they bear the responsibility of providing sufficient evidence to support the issuance of the notice. The tenant has called into question the landlords "good faith" in issuing the notice. When the tenant questions the "good faith", the landlord must satisfy the Arbitrator that they indeed intend to do what they say they will do as noted on the notice. I found KA's testimony very credible and compelling. It was evident that she was reluctant and upset when divulging intimate details about her marriage and the issues that arose. KA stated that the timing of the notice "may seem convenient and coincidental but the problem is real". KA further added that when she approached the tenant in November 2018 to sign a one year lease she was fully intending to follow through with it but these kinds of issues "can't be planned."

Based on the above, the landlords have satisfied me on a balance of probabilities that they have issued the notice in good faith. I find that the notice complies with section 52 of the Act and therefore the landlords are entitled to an order of possession pursuant to section 55 of the Act. The tenancy is terminated. The 2 Month Notice to End Tenancy for Landlord's Use of Property dated December 19, 2018 with an effective date of February 28, 2019 is of full effect and force.

The tenant has not been successful in their application.

Conclusion

The landlords' are granted an order of possession. The tenancy is terminated.

The tenant's application is dismissed in its entirety without leave to reapply.

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: February 07, 2019

Residential Tenancy Branch