



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, CNR, CNC, FFT

Introduction

On January 15, 2019, 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.

On January 17, 2019, the Tenant amended the Application to include a request to cancel a One Month Notice To End Tenancy For Cause.

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. The parties confirmed that they had exchanged the evidence that I have before 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.

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?
- Does the Landlord have sufficient cause to end the tenancy?
- Is the Landlord entitled to an order of possession?

Background and Evidence

The Landlord and Tenant both testified that the tenancy began on May 15, 2018, and is on a month to month basis. Rent in the amount of \$1,200.00 is to be paid by the first day of each month. The Tenant paid the Landlord a security deposit in the amount of \$500.00.

The Tenant occupies the upper suite of a house that contains a separate lower rental unit.

The Landlord issued the Tenant a 2 Month Notice To End Tenancy For Landlord's Use Of Property dated January 9, 2019, ("the 2 Month Notice"). The reason the Landlord selected for ending the tenancy is:

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

The effective date (the date the Tenant must move out of the rental unit) on the 2 Month Notice is March 31, 2019.

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 January 15, 2019, within the required timeframe.

The Landlord issued the Tenant a One Month Notice To End Tenancy For Cause dated January 11, 2019, ("the 1 Month Notice"). The reason the Landlord selected for ending the tenancy is:

Rental unit /site must be vacated to comply with a government order

The 1 Month Notice provides information for Tenants who receive the Notice. The Notice states that a Tenant has the right to dispute the Notice within 10 days after it is received by filing an Application for Dispute Resolution at the Residential Tenancy Branch.

The effective date (the date the Tenant must move out of the rental unit) on the 1 Month Notice is February 28, 2019.

The Tenant disputed the 1 Month Notice on January 17, 2019, within the required timeframe.

With respect to the 2 Month Notice, the Landlord testified that she issued the Notice because the Tenant had informed her that she was going to report that the lower rental unit was an illegal suite. The Landlord testified that she looked into the issues surrounding the rental property and decided that she would take possession of the entire house. The Landlord testified that she is moving into and will be occupying the entire rental home.

In response, the Tenant testified that she does not believe that the Landlord intends to move into the rental property. The Tenant testified that she believes that the Landlord will not be able to afford to live there because she relies on the rental income she gets from renting the home. The Tenant testified that she has provided text message evidence where the Landlord indicates she has no money for any renovations.

When the Tenant was asked if she had any other evidence to support her suggestion that the Landlord will not be moving into the unit, the Tenant testified that she does not have anything further.

With respect to the issuance of the 1 Month Notice the Landlord testified that a city inspector came to the rental property and inspected the basement suite. The Inspector said that the basement rental suite is in violation of the zoning bylaw. The City ordered that the basement suite needs to be decommissioned by March 18, 2019, at which time an inspection will be completed. A copy of the letter was provided. An email from a building official dated January 24, 2019, indicates that the wall and door separating the basement to the rest of the dwelling must be removed.

The Landlord testified that since the City requires her to remove the wall and door, the home becomes a single self-contained unit and not two self-contained units. The Landlord submitted that for this reason the Tenant's tenancy must end.

In response, the Tenant testified that the letter from the city makes it clear that only the basement suite must be decommissioned. She submitted that the upper suite that she rents does not need to be decommissioned.

On a matter unrelated to the application before me, the Landlord and Tenant agreed that the Tenant may pay the monthly rent by sending an electronic email bank transfer

each month on or before the date the rent is due. The parties asked that their agreement on this issue be included in this Decision.

Analysis

With respect to the 1 Month Notice, I have considered whether or not the city order to decommission the basement suite has any bearing on the tenancy agreement contract for the upper rental unit. I find that the tenancy agreement entitles the Tenant to the exclusive use of the upper unit. While I find that the city inspector requires the wall and door separating the upper and lower units be removed, I find that this does not affect the tenancy agreement between the Tenant and Landlord for the upper unit. I find that the city order to decommission the basement suite has no bearing on the tenancy agreement. The city order does not present sufficient reason to end the tenancy.

I find that there is insufficient evidence from the Landlord to support ending the tenancy for the reason listed in the 1 Month Notice To End Tenancy For Cause dated January 11, 2019. The 1 Month Notice is set aside.

With respect to the 2 Month Notice, 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.

The Guideline explains the concept of good faith as follows:

"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 that the Landlord intends to occupy the unit. There is insufficient evidence from the Tenant that the Landlord is acting dishonestly. While the Tenant suggested that the Landlord does not intend to occupy the home due to financial difficulties, the Tenant did not substantiate that suggestion with sufficient evidence.

The city is shutting down the basement suite and the Landlord testified that she is moving into the home. I am satisfied that the Landlord intends to use the rental unit for the purpose stated in the Notice.

I dismiss the Tenant's Application to cancel the 2 Month Notice to End Tenancy For Landlord's Use Of Property dated January 9, 2019.

Under section 55 of the Act, when a Tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the 2 Month Notice complies with the requirements regarding form and content and I find that the Landlord is entitled to an order of possession effective by 1:00 p.m. on March 31, 2019, after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

As the Tenant was not successful with her Application to set aside both notices to end the tenancy I do not grant recovery of the cost of the filing fee.

Conclusion

The Tenants application to set aside the 1 Month Notice To End Tenancy For Cause date January 11, 2019 is successful.

The Tenant's Application to cancel the 2 Month Notice To End Tenancy For Landlord's Use Of Property dated January 9, 2019, is not successful and is dismissed. I find that the Tenant did not provide sufficient evidence to support her suggestion that the Landlord is not moving into the unit due to financial issues. I am satisfied that the Landlord intends to use the rental unit for the purpose stated in the 2 Month Notice.

I grant the Landlord an order of possession effective by 1:00 p.m. on March 31, 2019. The Tenant must be served with the 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: February 27, 2019

Residential Tenancy Branch