



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 an Application for Dispute Resolution (“application”) seeking remedy under the *Residential Tenancy Act* (“Act”) by the tenant to cancel a 2 Month Notices to End Tenancy for Landlord’s Use of Property dated January 3, 2019 (“2 Month Notice”) and to recover the cost of the filing fee.

The tenant, a support person for the tenant and landlord BB (“landlord”) attended the teleconference hearing. The tenant and landlord (“parties”) gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me. Neither party had any witnesses to present at the hearing.

Neither party raised any concerns regarding the service or receipt of documentary evidence.

Preliminary and Procedural Matter

The parties confirmed their email addresses at the outset of the hearing. The parties confirmed their understanding that the decision would be emailed to both parties.

Issues to be Decided

- Should the 2 Month Notices be cancelled?
- Is the tenant entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on May 1, 2016 and reverted to a month to month tenancy after May 31, 2017. The parties agree that monthly rent was originally \$1,800.00 per month and is currently \$1,900.00 per month and is due on the first day of each month.

A copy of the 2 Month Notice was submitted in evidence. The 2 Month Notice indicates an effective vacancy date of March 31, 2019 and lists the following reason:

The rental unit will be 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 tenant is alleging that the 2 Month Notice was issued in bad faith due to the landlord being upset that the tenant has a roommate. In support of her allegation, the tenant has provided several documents which were reviewed during the hearing.

The first document was a text message from her roommate which is a text conversation between the tenant and their roommate which indicates that the roommate spoke to the landlord and that they should probably move out as the tenant did not put the roommate in the contract. The second document was an email exchange between the tenant and the landlord between the dates of November 19, 2018 and November 21, 2018. In the email exchange and during the hearing, the landlord confirmed that there was intent to serve a 1 Month Notice to End Tenancy for Cause due to the tenant having a roommate. In a third document submitted by the landlord, the landlord writes that it was the intention of the landlords to start the eviction process in December 2018; however, due to the Christmas season, the process could wait until January 2019.

The landlord DB then writes that her son, RBB moved into an apartment on December 30, 2018 and moved two days later on January 1, 2019 due to the apartment being "deplorable". The landlord writes that he is now staying at a friends' place until the rental unit apartment becomes available. The landlords failed to submit any documentation from RBB confirming it is their intent to move into the rental unit and RBB was not presented as a witness during the hearing to provide witness testimony. The mother of RBB, DB, did not attend the hearing to provide testimony. The tenant does not believe the reason stated by the landlords and believes it is an attempted to evict the tenant in bad faith.

Analysis

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

When a tenant disputes a 2 Month Notice, the onus of proof reverts to the landlords to prove that the 2 Month Notice is valid and should be upheld. If the landlords fail to prove the 2 Month Notice is valid, the 2 Month Notice will be cancelled and the tenancy shall continue.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails. In addition, when a tenant has filed to cancel a 2 Month Notice and calls into question the “good faith” requirement, the onus lies on the landlords to prove that the 2 Month Notice was issued with an honest intention, with no ulterior motive to end the tenancy.

I find that the landlord has failed to provide sufficient evidence that the 2 Month Notice was issued in good faith and without any ulterior motive to end the tenancy. I also find the landlord was unprepared for the hearing by failing to have a statement from RBB or to present RBB to give direct testimony. In addition, I find the timeline between the November 2018 email exchange where the landlord confirms that a 1 Month Notice to End Tenancy for Cause will be issued based on the tenant having a roommate, and then a few weeks later, a 2 Month Notice is issued instead, is sufficient evidence to support that the 2 Month Notice was not issued in good faith. Therefore, **I cancel** the 2 Month Notice dated January 3, 2019, as I find there is insufficient evidence to support the 2 Month Notice and that there is reasonable evidence before me to support the 2 Month Notice was not issued in good faith.

I ORDER the tenancy to continue until ended in accordance with the *Act*.

As the tenant’s application is successful, I grant the tenant a one-time rent reduction in the amount of **\$100.00** in full satisfaction of the recovery of the cost of the filing fee pursuant to section 72 of the *Act*.

Conclusion

The tenant’s application is successful.

The 2 Month Notice dated January 3, 2019 is cancelled due to insufficient evidence.

The tenancy shall continue until ended in accordance with the *Act*.

The tenant has been granted a one-time rent reduction in the amount of \$100.00 in full satisfaction of the recovery of the cost of the filing fee pursuant to section 72 of the *Act*.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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 25, 2019

Residential Tenancy Branch