



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PACE REALTY CORP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL

Introduction

On March 12, 2019, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* ("the Act") requesting to cancel a Two Month Notice to End Tenancy for Landlord Use of Property dated February 26, 2019.

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.

Issues to be Decided

- Is there sufficient reason to end the tenancy based on the Two Month Notice To End Tenancy for Landlord's Use Of Property?

Background and Evidence

The Landlord and Tenant testified that the tenancy began on January 15, 2018, as a one year fixed term tenancy that continued thereafter on a month to month basis. Rent in the amount of \$800.00 is to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a \$400.00 security deposit.

The Tenant testified that she received a Two Month Notice To End Tenancy For Landlord's Use Of Property dated February 26, 2019 ("the 2 Month Notice"). The effective date of the 2 Month Notice is April 30, 2019.

The 2 Month Notice contains one reason for ending the tenancy:

- 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 received by filing an Application for Dispute Resolution at the Residential Tenancy Branch.

The Tenant disputed the 2 Month Notice by applying for Dispute Resolution within the required timeframe.

The burden of proof to support the reason to end the tenancy rests with the Landlord. The Landlord testified that he is living in the lower mainland; however, he is moving up north to live in the rental home. The Landlord testified that his mother and sister will also be living with him. The Landlord testified that he owns other properties in that community and he plans to renovate other properties and live in the unit while doing renovations.

The Tenants advocate submitted that the Landlord has not provided documentation to prove he is moving into the rental unit. She submitted that the Landlord will be having his workers stay at the unit and renovate the other properties.

In response, the Landlord testified that he has a big family business and he acknowledged that he will allow workers to also stay at the rental home. He submitted that he would avoid other accommodation costs when he can allow workers to stay with him. The Landlord testified that he does not have any documentation about moving because he has not moved yet.

The Landlord testified that he intends to live in the rental unit for up to a year and a half.

When asked whether the Tenant had any evidence to prove that the Landlord is not moving into the rental unit, the Tenant replied that she did not have anything further.

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, and on a balance of probabilities, I find as follows:

Section 49 of the Act permits the Landlord to issue a 2 Month Notice to end a month to month tenancy if the Landlord intends in good faith to occupy the rental unit.

The Tenant suggests that the Landlord may not be acting in good faith; however the claim is not substantiated with sufficient evidence.

I have considered the Landlords motives for issuing the 2 Month Notice and I find that there is insufficient evidence from the Tenant that the Landlord has an intention to defraud, act dishonestly, or avoid obligations under the Act or tenancy agreement. The

Landlord is moving into the unit as a business decision, in order to live and run his business in that community.

The Tenants application to cancel the 2 Month Notice To End Tenancy For Landlord's Use Of Property dated February 26, 2019, is dismissed.

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 May 31, 2019, after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

Conclusion

There is insufficient evidence from the Tenant to establish that the Landlord is not moving into the rental unit.

The Tenant's Application to cancel the Two Month Notice To End Tenancy For Landlord's Use Of Property dated February 26, 2019, is dismissed.

I grant the Landlord an order of possession effective by 1:00 p.m. on May 31, 2019, after service on the Tenant. 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: May 08, 2019

Residential Tenancy Branch