



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

On March 15, 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 March 1, 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 in June 2017, on a month to month basis. Rent in the amount of \$700.00 is to be paid to the Landlord by the first day of each month. There was no security deposit require to be paid to the Landlord.

The Tenant testified that she received a Two Month Notice To End Tenancy For Landlord’s Use Of Property dated March 1, 2019 (“the 2 Month Notice”).

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's son provided affirmed testimony that he intends to move into the rental unit.

The Tenant testified that the Landlord's response is the same reason the Landlord used when evicting the past two Tenants from the rental unit. The Tenant submitted that the Landlord did not issue the 2 Month Notice in good faith.

The Tenant submitted that the Landlord issued a 2 Month Notice To End Tenancy For Landlord's Use Of Property dated April 27, 2016, with the reason that the rental unit will be occupied by the Landlord or the Landlord's close family member. At that time the occupant accepted the 2 Month Notice and vacated the rental unit.

The Tenant testified that the Landlord's son did not move into the rental unit after the occupant vacated. The Tenant testified that the Landlord entered into a tenancy agreement with a new Tenant for the same rental unit a couple of months later, on August 1, 2016. The Tenant provided a copy of a Two Month Notice To End Tenancy For Landlord's Use Of Property dated April 27, 2016, and a copy of the tenancy agreement with the new Tenant dated August 1, 2016.

The Tenant testified that the Landlord issued another Two Month Notice To End Tenancy For Landlord's Use Of Property dated February 24, 2017, with the reason that the rental unit will be occupied by the Landlord or the Landlord's close family member. The Tenant testified that the Landlord indicated that the Landlord's son was moving into the unit; however the Landlord's son did not move into the rental unit after the occupant

vacated. The Tenant provided a copy of the Two Month Notice To End Tenancy For Landlord's Use Of Property dated February 24, 2017.

The Tenant testified that the Landlord has a pattern of issuing a Two Month Notice To End Tenancy For Landlord's Use Of Property with the reason that the rental unit will be occupied by the Landlord's son; however, the Landlord's son has not moved into the unit.

The Tenant submitted evidence that on February 3, 2019, the Landlord's son asked them to renew the lease as it would be in their best interest. On February 17 the Landlord gave the Tenants two weeks' notice to remove their animals from the stalls in the barn.

In response, the Landlord's son testified that with respect to the 2 Month Notice To End Tenancy For Landlord's Use Of Property dated February 24, 2017, he changed his mind about moving into the unit because of allergies and the unit was not kept up to his standards.

The Landlord and her agent did not respond to the Tenants submissions regarding the Two Month Notice To End Tenancy For Landlord's Use Of Property dated April 27, 2016, and the subsequent re-rental of the unit a couple months later.

The Tenant submitted that the Landlords sons' submission is false because until recently, the Landlord's son has never been inside the rental unit and the home was spotless.

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:

In considering the Landlords motives for issuing the 2 Month Notice, I have considered the Tenants testimony that the Landlord is not acting in good faith.

I find that the Tenant substantiated her claim that the Landlord is not acting in good faith. The Tenant has provided evidence that the Landlord has failed to occupy the rental unit on two previous and recent occasions where a 2 Month Notice was issued with the reason that the Landlord's son was moving into the unit.

Since the good faith intention of the Landlord was called into question, I find that the burden is on the Landlord to establish their intention that the rental unit will be occupied by the Landlord's son.

The Landlord did not submit any documentary evidence to support their submission that the Landlord's son is moving into the rental home. Other than a statement from the Landlord's son that he intends to move into the unit there is no further evidence to establish or support their intent. I have also considered that the 2 Month Notice was issued shortly after the Landlord approached the Tenants to re-negotiate the terms of the tenancy.

I find that there is insufficient evidence from the Landlord to establish that they have a good faith intention to move into the rental unit. The Two Month Notice to End Tenancy for Landlord's Use of Property dated March 1, 2019, is set aside.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. The Tenants were successful with their application. I authorize the Tenants to deduct the amount of \$100.00 from one future rent payment.

The tenancy will continue until ended in accordance with the Act.

Conclusion

The Tenants' application to cancel the Two Month Notice to End Tenancy for Landlord's Use of Property dated March 1, 2019, is successful. The Tenants are authorized to deduct \$100.00 from one future rent payment.

The tenancy will continue until ended in accordance with the Act.

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 07, 2019

Residential Tenancy Branch