



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

On May 8, 2019, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* ("the Act") seeking to cancel a Two Month Notice to End Tenancy for Landlord Use of Property.

The matter was set for a conference call hearing. The property owners agent, Ms. D.R. ("the Landlord") and the Tenant appeared at the hearing. The Tenant was assisted by a legal advocate and had a witness present.

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. Both parties confirmed that they have exchanged the documentary 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.

Procedural Matters

The Landlord disconnected from the teleconference hearing at 11:05 AM. The Landlord reconnected at 11:06 AM. The hearing was paused during the Landlord's absence and no testimony was taken from the Tenant or the Tenant's advocate.

Issues to be Decided

- Does the Landlord intend, in good faith, to move into the rental unit, or allow a close family member to move into the unit?
- Is the Landlord entitled to an order of possession for the rental unit?

Background and Evidence

The property owner who issued the Two Month Notice did not attend the hearing. The owner's daughter, Ms. D.R. attended as the agent/ Landlord. Ms. D.R. also lives on the rental property.

The property owner provided an unsigned letter dated June 17, 2019, indicating that she will not be attending the hearing. The letter provides:

"My daughter (D.R.) and her husband (W.R.) have authorization to represent me regarding all dealings with the house, including any concerns the tenant may have."

The rental unit is a house containing two separate self-contained rental units. The Tenant lives in a lower two bedroom unit and the owner's daughter, Ms. D.R. lives with her husband Mr. W.R. in the upper one bedroom unit. Ms. D.R. testified that she has a tenancy agreement with her mother and she pays rent in the amount of \$850.00 each month.

The Landlord and Tenant testified that the tenancy began on December 1, 2014, on a month to month basis. Rent in the amount of \$925.00 is to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit in the amount of \$450.00.

The property owner issued the Tenant a Two Month Notice To End Tenancy For Landlord's Use Of Property dated April, 2019 ("the Two Month Notice"). The Landlord testified that the Notice was served to the Tenant in person on April 29, 2019. The reason for ending the tenancy within the Notice 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 Two Month Notice is June 30, 2019.

The Two 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 Two Month Notice on May 8, 2019, within the required time period.

The Landlord provided testimony on why the notice to end tenancy was issued. Ms. D.R. testified that she is starting a family and she needs use of the entire rental home. She testified that they will need more room and her husband will be moving his office downstairs. She testified that she is pregnant and she stated that she does not need added stress during her pregnancy.

The Landlord testified that there is no ulterior motive for ending the tenancy. She testified that in September 2018, she spoke to her mother about the possibility of moving into the lower rental unit. She testified that the Tenant was informed that the Landlord may take over the entire home back in November 2018. She testified that the entire house will be used by the Landlord and the Landlord will not be re-renting the upper or lower units. She testified that when she takes over the house, she will be paying rent of \$1,775.00 each month.

The Landlord testified that she found out that she was pregnant on April 27, 2019, and she spoke to her mother on that date. The owner issued the Two Month Notice to the Tenant two days later.

In response to the Landlord's testimony, the Tenant testified that she does not remember any conversation with the owner where she mentioned that her daughter will want the entire house.

The Tenant's advocate Ms. M.B. testified that a previous occupant who occupied the upper unit of the property was recently given a Two Month Notice so that Ms. D.R. could move into the upper rental unit.

Ms. M.B. testified that the Landlord has recently attempted to end the Tenants tenancy twice and was not successful. The Landlord applied for an early end of tenancy and also issued the Tenant a One Month Notice To End Tenancy For Cause.

On March 7, 2019, the Tenant applied to cancel the One Month Notice and also requested that the Landlord comply with the Act, regulation, or tenancy agreement, and requested an order requiring the Landlord to provide services or facilities required by law. The Tenant provided a copy of the Decision for the early end of tenancy application where the Arbitrator found that the Landlord did not meet the onus of proving the tenancy should end prior to having a hearing based on the disputed One Month Notice.

Following the hearing for the dispute of the One Month Notice the Arbitrator's decision dated April 29, 2019, provides that the Landlord failed to show that the Tenant was putting the Landlord's property at significant risk or was causing a health and safety hazard. The Landlord's One Month Notice was cancelled and the tenancy was ordered to continue until it is ended in accordance with the Act. The Arbitrator's decision dated April 29, 2019, also orders the Landlord to comply with the following:

- to allow the Tenant access to the laundry four days per week.
- to allow the Tenant with access to the backyard.
- that the Tenant is entitled to park and recharge her scooter outside the rental property.

The Tenant provided a copy of a letter dated May 13, 2019, sent from the Landlord Ms. D.R. to the Tenant's advocate. The letter indicates that the Landlord will only allow the Tenant access to laundry one day per week; that her scooter must stay in the space the Landlord has provided; and that the Tenant may use the backyard to go for a walk.

The Tenant's advocate submitted a request for clarification of the April 29, 2019 Decision. On May 14, 2019, the Arbitrator clarified the orders as provided above.

The Tenant testified that in January 2019, she was issued a rent increase. She testified that the increase was not the allowable amount and did not give the proper amount of time/notice. The Tenant testified that when she raised the issue with the Landlord, the Landlord became enraged and stomped off.

The Tenant testified that she received another notice of rent increase on March 24, 2019. She testified that the notice was not signed or dated. When the Tenant raised the issue, she testified that Ms. D.R. took the notice and signed and dated it. The Tenant testified that the Landlord said that he could get \$1,300.00 per month for the rental unit. The Tenant testified that she attempted to pay the rent increase; however, the Landlord rescinded the notice of rent increase.

The Tenant provided a copy of an email received from the Landlord dated June 3, 2019, regarding the Arbitrators orders where the Landlord writes that the Tenant gets what she pays for as you can tell by her rent which is 60% below market value.

The Tenant's advocate submitted that a city bylaw requires the Landlord to remove a kitchen in one of the suites if the home is being converted into a single family dwelling. She submitted that the Two Month Notice is premature because the Landlord needs permits to reconvert the home. The Tenant's advocate suggested that the Landlord should have issued a Four Month Notice to end Tenancy for Conversion of Rental Unit.

The Tenant's advocate submitted that the Landlord has an ulterior motive to end the tenancy that is toxic.

The Tenant testified that she received the Two Month Notice the day before she received the April 29th Decision regarding the dispute of the One Month Notice To End Tenancy For Cause.

Ms. M.B. submitted that the onus is on the Landlord to prove good faith. She submitted that the Landlord must have an honest intention and no ulterior motive. She submitted that the Landlord did not provide medical evidence to support that she is pregnant. She submitted that the Landlord has an ulterior motive as evidenced within the Decisions from the earlier hearings.

Ms. M.B. provided and referred to a tenancy branch decision where the issue of good faith was addressed and the Arbitrator found that previous notices to end tenancy which were issued supports an ulterior motive for ending the tenancy.

The Tenant provided a witness, Mr. C.T. a home support worker. Mr. C.T. testified that he observed a pattern of resistance on the part of the Landlord. Mr. C.T. testified that Mr. W.R. said he could get more rent on the open market and that he would continue to issue notices to end tenancy. Mr. C.T. testified that Mr. W.R. wants the Tenant's scooter removed from the property and threatened to revoke the Tenants' rights to use the laundry entirely.

In reply, Ms. D.R. testified that Mr. C.T. was abrasive with her husband Mr. W.R. and contacted him at inappropriate times of the day.

Ms. D. R. provided testimony confirming that the Tenant pays less than market rent and that they did try to increase the rent; however, they decided to not increase the rent to help her out.

Ms. D.R. testified that if they are successful with ending the tenancy, they are agreeable to extend the end of tenancy date by an additional month to provide the Tenant with more time to move.

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 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 as follows:

I find that the property owner correctly issued a Two Month Notice To End Tenancy For Landlord's Use Of Property and that a Four Month Notice to End Tenancy under section 49(6) of the Act is not applicable to this situation.

The Two Month Notice indicates the rental unit will be occupied by the Landlord or the Landlord's spouse or a close family member of the Landlord or the Landlord's spouse.

I find that the property owner intends for her daughter and her daughter's husband to move into the rental unit and therefore they meet the definition of a close family member. I find that the Two Month Notice complies with section 49(3) of the Act.

I find that the property owner has the right to end the tenancy if they intend in good faith to occupy the rental unit. The property owner who issued the Two Month Notice did not attend the hearing to provide direct testimony regarding her decision to issue the Two Month Notice. The owner's agent is her daughter and is also a Tenant on the property.

I accept the Landlord's testimony that they intend to occupy both units of the rental property. I accept that they want to start a family and need more space. I find that the Landlord does not need to provide medical evidence that she is pregnant in order to prove her honest intention to occupy the rental unit.

I have turned my mind to whether or not the Landlord has an ulterior motive to end the tenancy. I have considered the policy guideline that provides that "good faith" means there is no intent to defraud, act dishonestly, or avoid obligations under the legislation or the tenancy agreement.

I find that the Landlord recently attempted to end the tenancy on two separate occasions. I also find that the Landlord incorrectly attempted to increase the rent. I find that the documentary evidence also establishes that the Landlord does not want to comply with the Arbitrators order made on April 29, 2019, which was further clarified on May 14, 2019.

After considering the totality of the evidence before me, it appears to me that the owner's daughter/agent, moved into the upper rental unit after that occupant was evicted and the agent proceeded to attempt to unilaterally change the terms and conditions of the existing tenancy agreement by reducing laundry usage, parking for the scooter, and use of the yard. I find that the Tenant's request for an order that the Landlord provide these services was made prior to when the 2 Month Notice was issued.

I find that the Landlord's recent attempts to end the tenancy for unsupported reasons suggests that the Landlord has an ulterior motive to end the tenancy and I find that the Landlord does not want to fulfil their obligations as ordered by an Arbitrator. I find that it

is more likely than not that the Landlord is attempting to end the tenancy to avoid obligations under the tenancy agreement.

The Tenant's application to cancel the Two Month Notice To End Tenancy For Landlord's Use Of Property dated April 2019, and served on April 29, 2019, is granted. The Two Month Notice is set aside.

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

Conclusion

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

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

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: June 20, 2019

Residential Tenancy Branch