



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, DRI, LAT, LRE, MNDCT, OLC, RP

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to make repairs to the rental unit pursuant to section 33;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
- an order regarding a disputed additional rent increase pursuant to section 43;
- a determination regarding their dispute of an additional rent increase by the landlord pursuant to section 43; and
- an order to allow access to or from the rental unit or site for the tenant or the tenant's guests pursuant to section 70.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The parties confirmed that they had exchanged their documentary evidence for this hearing. The landlord was represented by his son.

Preliminary and Procedural Matters

Residential Tenancy Branch Rule of Procedure 2.3 permits an arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. The most important issue to address is whether or not the tenancy will continue. Accordingly, I find it appropriate to exercise my discretion to dismiss all of the tenants application save and except for the tenant's request for an order cancelling the Two Month Notice, with leave to reapply.

Issues to be Decided

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Background and Evidence

The tenant gave the following testimony. The tenancy began on March 1, 2014. The tenant originally resided in the two bedroom basement unit for a monthly rent of \$650.00. The other unit in the basement became available two years later for a rate of \$550.00 per month which the tenant currently resides in. The tenant testified that she was given a Two Month Notice to End Tenancy for Landlords Use of Property on May 5, 2019 for the following reason:

- *The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse...*

The tenant testified that the landlord issued the notice in bad faith. The tenant testified that the landlord had advised her that the rent for that unit could be as high as \$900.00 per month. The tenant testified that the landlord advised her that an uncle from India would be moving here and required her unit. The tenant testified that the landlord later changed their story and stated that the grandfather would be moving in. The tenant testified that she feels that landlord wants to end the tenancy so that they can rent the unit out at a higher rate.

The landlords' agent gave the following testimony. The agent testified that the landlords father and the agents grandfather; would be moving into the subject unit. The agent testified that the grandfather suffered a stroke in September and the family would like to have him stay in a bedroom as he is presently sleeping in the kitchen in the two

bedroom unit. The agent testified that he or his brother would move into the subject unit and the grandfather could take one of the two bedrooms in the two bedroom suite.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

The tenant has called into question whether the landlord has issued the notice in good faith. Residential Tenancy Policy Guideline 2 addresses the "good faith requirement" as follows.

Good faith is an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage.

A claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End the Tenancy. This might be documented through:

*a Notice to End Tenancy at another rental unit;
an agreement for sale and the purchaser's written request for the seller to issue a Notice to End Tenancy; or
a local government document allowing a change to the rental unit (e.g., building permit) and a contract for the work.*

If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy.

If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive for ending the tenancy.

The landlords' agent gave various versions of who was going to move into the unit. The agent gave contradictory, inconsistent and vague testimony. I find that the landlords'

agent was not credible or consistent in his testimony. Despite having a lengthy hearing and giving the agent numerous opportunities to clarify himself, it was still unclear as to who was going to be residing in the subject unit. Based on the above, and on a balance of probabilities, I find that the landlord has not satisfied me that a close family member is moving in; as a result, I hereby cancel the notice, it is of no effect or force.

Conclusion

The Two Month Notice to End Tenancy for Landlords Use of Property dated May 5, 2019 is cancelled. The tenancy continues.

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: July 05, 2019

Residential Tenancy Branch