



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, DIR, LAT, LRE

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice"), issued on June 29, 2019, to be allowed authorization to change the locks to the rental unit, to suspend or set conditions on the landlord's right to enter the rental unit and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of evidence submissions. However, the tenants submitted evidence through the Residential Tenancy Branch electronic portal on July 11, 2019, one day before the hearing and were not provided to the landlord in accordance with the Rules of Procedures. Therefore, I will not consider any evidence that was filed on July 11, 2019.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenants indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice to End Tenancy. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenants' request to set aside the Notice to End Tenancy and to recover the filing fee at these proceedings. The balance of the tenants' application is dismissed, with leave to reapply.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving sufficient evidence to terminate the tenancy for the reasons given on the Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Should the Notice be cancelled?

Background and Evidence

The parties agreed that the Notice was served on the tenants indicating that the tenants are required to vacate the rental unit on August 31, 2019.

The reason stated in the Notice was that:

- The rental unit will 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 landlord testified that they bought the property by an assignment from a limited company that had plans to develop the property. The landlord stated that the developer was not going to be able to complete the sales transaction of the premises and the contract to purchase was assigned to them and all clauses and restrictions were removed.

The landlord testified that when the assignment of the sale was done, they were unable to have the seller give notice to end the tenancy as there was not enough time to give notice under the Act before the transfer of the property was completed.

The landlord testified that when they bought the property it was for residential use and that they are planning to move into the rental unit.

The tenants testified that the landlord is not acting in good faith. The tenants stated that the landlord and two other people attend the property unannounced on June 1, 2019 and asked to speak to the male tenant. The tenants stated that the male tenant meet the landlord out on the driveway. The female tenants stated that they could not hear the actual conversation; however, it was very heated and loud.

The male tenant testified that when they were talking to the landlord, and the two other males that the landlord told them that they wanted to increase the rent \$1,000.00 per month and wanted him to sign some papers. The male tenant stated that because he would not sign the papers he was threatened with being evicted.

The landlord testified that they never discussed a rent increase. The landlord stated that they went to the premise to talk to the tenant about obtaining a key to the rental premise as a key was not provided when the property title was changed. The landlord stated that they were also concerned with the stated of the property and they later received warning letters from the municipality on this issue.

The landlord's witness BD testified that they were on the driveway when they meet with the male tenant. BD stated there was no discussion on any rent increase. BD stated that the male tenant was upset that the landlord attended the rental premise without giving notice and wanted to look at the property.

Analysis

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

How to end a tenancy is defined in Part 4 of the Act. Section 49(1) of the Act a landlord may end a tenancy by giving notice to end the tenancy.

I have considered all of the written and oral submissions submitted at this hearing, I find that the landlord has provided sufficient evidence to show that:

- The rental unit will 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)

In this case, the landlord purchased the property under an assignment agreement of a contract for purchase that was between the original owner and a development company, as the development company was unable to meet the terms of the contract.

The property was purchased by the landlord on May 1, 2019. The evidence of the landlord was that they are planning to move into the property.

Both parties have provided a different version of events that occurred on June 1, 2019, questioning the good faith requirements. The tenants' version was the landlord attended the property unannounced and wanted a significant rent increase. The landlord's version that they attended the property to obtain a key, and were concerned about the state of the property. I find both versions are probable.

However, I accept the landlord's version over the tenants. The landlord had a witness attend the hearing and provided testimony that they were present during the conversation that held on the driveway. While the tenants have provided witnesses statements that indicated that they saw a heated discussion between the parties on June 1, 2019 and were told by the tenant that it was because of a request for an illegal rent increase. I find these statements cannot be relied upon as the witnesses did not actually hear the conversation, and are repeating what they were told.

Further, the landlord has provided documentary evidence from the municipality that the property was not in compliance with city bylaws due to vehicles, and the property being unsightly, leading me to believe that this was not an unreasonable discussion when the landlord attended to view the property.

Therefore, I find I am not satisfied that the landlord had an ulterior motive to end the tenancy. I find the Notice issued on June 29, 2019 has been proven by the landlord and is valid and enforceable. Therefore, I dismiss the tenants' application to cancel the Notice.

In this matter, the landlord indicated that they would agree to extend the effective date in the Notice, to October 31, 2019 should the Notice be found valid.

The tenancy will end on October 31, 2019 in accordance with the Act. I find the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective 1:00 PM on October 31, 2019. A copy must be served upon the tenants.

Should the tenants not give notice to end the tenancy earlier under the Act. The tenants are entitled to withhold rent for October 2019, as this will be their compensation for receiving the Notice.

Should the tenants fail to pay rent for any subsequent month, the landlord is entitled to exercise their rights under section 46 of the Act.

Conclusion

The tenants' application to cancel the Notice is dismissed. The landlord is granted an order of possession, pursuant to section 55 of 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: August 15, 2019

Residential Tenancy Branch