



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, DRI, FF

Introduction

On August 3, 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; for an order for the Landlord to comply with the Act; to dispute a rent increase; and to recover the filing fee for the Application.

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.

Preliminary and Procedural Matters

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important matter to determine is whether or not the tenancy is ending based on the Two Month Notice To End Tenancy For Landlord's Use Of Property dated August 2, 2019.

If the parties are unable to resolve the Tenant's claim that the Landlord issued an illegal rent increase on their own, the Tenant has leave to reapply for dispute resolution seeking compensation due to an illegal rent increase.

Issues to be Decided

- Does the Landlord have the intention 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?

Background and Evidence

The Landlord and Tenant both testified that the tenancy began on August 1, 2014, which is currently on a month to month basis. Rent in the amount of \$1,800.00 is to be paid by the first day of each month. The Tenant paid the Landlord a security deposit in the amount of \$1,500.00.

The Landlord issued the Tenant a Two Month Notice To End Tenancy For Landlord's Use Of Property dated August 2, 2019 ("the Two Month Notice"). The reason the Landlord selected for ending the tenancy on the Notice is:

The rental unit will be occupied by the Landlord or the Landlord's close family member.

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 assumed to be received by filing an Application for Dispute Resolution at the Residential Tenancy Branch.

The effective date (the date the Tenant must move out of the rental unit) on the Two Month Notice is October 2, 2019.

The Tenant disputed the Two Month Notice on August 3, 2019, within the required timeframe.

The Landlord testified that his daughter who currently lives with him is now in university and transportation back and forth is a headache. The Landlord testified that his daughter will be moving into the rental unit to make it easier for her to get back and forth from University. He testified that his daughter currently needs to take two busses and one sky train to get to University. He testified that when she moves into the rental unit, she will only need to take one bus and one sky train.

In response to the Landlord's testimony, the Tenant testified that she does not know if the Landlord is telling the truth. She testified that the Landlord did mention to her last year that his daughter will be attending university, and he mentioned that he could get more monthly rent for the unit when the Tenant moves out. The Tenant testified that she finds it unlikely that the Landlord will have his daughter move in and charge no rent. The Tenant testified that this is only an assumption on her part based on their culture.

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 Landlord issued a Two Month Notice To End Tenancy For Landlord's Use Of Property dated August 2, 2019. 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 his daughter to move into the rental unit and therefore this meets 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 Landlord has the right to end the tenancy if they intend in good faith to occupy the rental unit. The Landlord who issued the Two Month Notice attended the hearing and provided direct testimony regarding the decision to issue the Two Month Notice.

I accept the Landlord's testimony that he intends for his daughter 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 there is insufficient evidence from the Tenant to establish that the Landlord is acting dishonestly. The Tenant's submission that she does not know if the Landlord is telling the truth is not sufficient evidence to substantiate the claim that the Landlord is not acting in good faith.

The Tenant's application to cancel the Two Month Notice To End Tenancy For Landlord's Use Of Property dated August 2, 2019, is dismissed. The tenancy is ending.

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.

Under section 53(2) of the Act, the effective date of the Two Month Notice automatically corrects to be the earliest date that complies with section 49(2) of the Act. The effective date of the Two Month Notice is October 31, 2019.

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

As the Tenant was not successful with her Application, I do not grant recovery of the cost of the filing fee.

Conclusion

The Tenant's Application to cancel the Two Month Notice To End Tenancy For Landlord's Use Of Property dated August 2, 2019, is dismissed.

I find that the Landlord is entitled to an order of possession effective by 1:00 p.m. on October 31, 2019, after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

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: October 07, 2019

Residential Tenancy Branch