



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, RP

Introduction

This hearing was convened as the result of the tenant's application for dispute resolution under the Residential Tenancy Act ("Act"). The tenant applied for an order cancelling the landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the "Two Month Notice") and an order requiring the landlord to make repairs to the rental unit.

The tenant, another individual the listed tenant/applicant said was a tenant, EC, and the landlord attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, the landlord confirmed that he had received the tenant's evidence and also confirmed he had provided no evidence himself.

Thereafter the participants were provided the opportunity to present their evidence orally and make submissions to me.

I have reviewed all relevant evidence before me that met the requirements of the Residential Tenancy Branch Rules ("RTB") Rules of Procedure (the "Rules"); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Preliminary matters-

I have determined that the portion of the tenant's application dealing with a request for an order for repairs to the rental unit is unrelated to the primary issue of disputing the Two Month Notice. As a result, pursuant to section 2.3 of the Rules, I have severed the tenant's Application and dismissed that portion, **with leave to reapply**.

Also, before the hearing concluded, the landlord was asked if there was anything else he wanted to say or present, and he said no. Therefore, the landlord did not call his witness into the hearing.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the Two Month Notice?

Background and Evidence

The tenant and the landlord agreed there was no written tenancy agreement, with the tenant saying one had never been provided and the landlord saying the tenant would not sign a rental application.

The tenant submitted without dispute that this tenancy began in mid-August 2017 and that monthly rent is \$800.00.

The tenant stated that he received the Two Month Notice from the landlord on July 30, 2019 by personal service. The Two Month Notice submitted into evidence by the tenant listed an end of tenancy date of October 1, 2019.

The Notice listed that the rental unit will be occupied by the landlord or the landlord's close family member.

The tenant filed his application for dispute resolution in dispute of the Notice on August 13, 2019.

Pursuant to the Rules, the landlord proceeded first in the hearing and testified in support of issuing the tenant a Notice.

The landlord provided no documentary evidence.

Upon my inquiry, the landlord submitted that the rental unit is in a 40-unit apartment complex, and that he owns four of those units.

The landlord said that since he issued the Notice to the tenant, he has been living at his taxi business and needs to move into the rental unit to have a place to live.

Upon my inquiry about his three other units and why he needed this rental unit in particular, the landlord answered that he can work on the rental unit while he is living there, because the other tenants pay their rent, and because the tenant has sub-let this rental unit to people he does not know.

The landlord additionally said that the tenant has taken up the carpet in the rental unit without permission.

Tenant's response-

The tenant submitted that he has never sub-let the rental unit, as EC is a co-tenant and has lived there since the tenancy began. The tenant said that the landlord knows EC and had the permission of the landlord's previous property manager, T, to have a co-tenant.

The tenant also said that T told him he could remove the carpet as it was filthy, due to the cat and dog feces that had been in the carpet. The tenant submitted that the owner was to replace the carpet, but had not done so.

The tenant submitted that the landlord has never provided a rent receipt and that he has always paid his rent on time.

The tenant claimed he talked to an acquaintance who said the landlord offered to rent the rental unit for an increased rent of \$1,200.00.

Landlord's response to the tenant-

The landlord said he does provide receipts to the tenant and denied offering the rental unit to someone else.

Analysis

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

Once the tenant made a timely application to dispute the Two Month Notice, the landlord became responsible to prove the Two Month Notice is valid and should be upheld.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

In this case, I find the tenant has questioned the good faith intent of the landlord in issuing this Notice, as he asserts that the landlord had ulterior motives, such as wanting to increase the monthly rent and to evict him due to the removal of the carpet.

Residential Tenancy Policy Guideline "2. Good Faith Requirement When Ending a Tenancy" provides me with guidance in determining whether or not a landlord has "good faith":

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....

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.

[emphasis added]

I find the landlord's own evidence demonstrates that he was seeking some other grounds by which to end the tenancy, such as working on the unit and because he claimed the tenant removed the carpet.

If the landlord intends to work on the rental unit, I find this lends credibility to the tenant's assertion that the landlord intends to increase the monthly rent with a new tenant.

I also find the landlord's statement that the other tenants in his three other rental units in the same apartment complex pay their rent also indicates an ulterior motive in ending this tenancy.

I find, on a balance of probabilities, that the landlord has shown an ulterior motive for ending the tenancy.

As the landlord has not proven, on a balance of probabilities that he had a good faith intention, the landlord does not meet the test as set out in paragraph 49(3) of the Act.

I order that the 2 Month Notice dated and issued to the tenant on July 30, 2019, is cancelled and is of no force and effect. The tenancy will continue until it is ended in accordance with the Act.

Conclusion

The landlord's Two Month Notice to End Tenancy for Landlord's Use of the Property dated May 26, 2019, is not valid and not supported by the evidence and the tenant is granted an order cancelling the Notice.

The portion of the tenant's application dealing with a request for repairs for the landlord is dismissed, with leave to reapply.

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 17, 2019

Residential Tenancy Branch