



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord's application: OPM FFL
Tenant's application: CNL

Introduction

This hearing dealt with an Application for Dispute Resolution ("application") by both parties seeking remedy under the *Residential Tenancy Act* ("Act"). The tenant has applied to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property dated October 1, 2019 ("2 Month Notice"). The landlord has applied for an order of possession based on a Mutual Agreement to End Tenancy and to recover the cost of the filing fee.

The tenant, the tenant's advocate KD ("advocate"), a witness for the tenant RH ("witness") and two agents for the landlord AG and JG ("agents") attended the teleconference hearing. The parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me. At the outset of the hearing, only the tenant confirmed that they had a witness to present at the hearing. Words utilizing the singular shall also include the plural and vice versa where the context requires.

Neither party raised any concerns regarding the service or receipt of documentary evidence. The filing fee for the tenant was waived.

Preliminary and Procedural Matter

The parties provided their email addresses at the outset of the hearing, which were confirmed by the undersigned arbitrator. The parties confirmed their understanding that the decision would be emailed to both parties.

Issues to be Decided

- Is the Mutual Agreement to End Tenancy enforceable under the *Act*?
- Should the 2 Month Notice be cancelled or upheld?
- Should the tenancy end or continue under the *Act*?
- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A one year fixed-term tenancy began on November 1, 2018 and reverted to a month to month tenancy after November 1, 2019. Monthly rent is \$1,100.00 per month and is due on the first day of each month. There is no dispute that the former landlord sold the home to the current owner, CP.

There are two issues to address in this matter before me. The first issue is a Mutual Agreement to End Tenancy document dated December 15, 2019 ("Mutual Agreement"). The second issue is the 2 Month Notice. Regarding the Mutual Agreement, there was no dispute during the hearing that the landlord continued to accept rent after the end of tenancy date stated in the Mutual Agreement, which was listed as March 31, 2019. The agents also confirmed that they were not aware of any receipts for "use and occupancy only" once rent was received after March 31, 2019 from the tenants. As a result, I find the landlord by their own actions, reinstated the tenancy by accepting rent after March 31, 2019 and by failing to issue receipts for "use and occupancy only". I will further address the Mutual Agreement below.

The second issue is the 2 Month Notice. The parties agreed that there were two previous hearings on July 15, 2019 and September 30, 2019 ("previous hearings"), both of which, the landlord or an agent did not attend the hearings. There is no dispute that in each of previous hearings, the landlord had served the tenant with the same reason listed on the current 2 Month Notice before me, which states:

The rental unit will be 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 tenant and advocate raised the issue of good faith during the hearing by stating that they do not believe the landlord intends in good faith to occupy the rental unit as the

landlord has begun renovations in the upper and lower floors of the home. The rental unit is on the main floor of a three-storey home.

The agents failed to submit any witness statement or other documentation from the landlord that they intend to reside in the rental unit other than the 2 Month Notice. The agents stated that the landlord verbally advised them that they intend to reside in the rental unit. At this time of the hearing, the parties were advised that I found the Mutual Agreement was not enforceable under the *Act*, due to the landlord reinstating the tenancy, which I will describe further below. The parties were also advised that without a signed written statement of the landlord or direct testimony of the landlord, I was not satisfied that the landlord issued the 2 Month Notice in good faith. As a result, the 2 Month Notice was cancelled.

Once my decision was rendered orally during the hearing, the agents requested to call CP as a witness, which was not permitted as it was explained to both parties that arrangements for witnesses or statements from witnesses should have been arranged prior to the hearing or at the very latest, at the outset of the hearing, which the tenant had arranged. Requesting for the landlord to be called as a witness after a decision has been orally rendered is too late in the dispute resolution process.

Analysis

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

Firstly, I find the Mutual Agreement between the parties is not enforceable under the *Act*, as there was no dispute that the tenant continued to occupy the rental unit and pay rent, and that there was no evidence before me that the landlord had issued receipts to the tenant for “use and occupancy only”. Therefore, I find the actions of the parties support that the tenancy was reinstated after March 31, 2019.

Secondly, when a tenant disputes a 2 Month Notice, the onus of proof reverts to the landlord to prove that the 2 Month Notice is valid and should be upheld. If the landlord fails to prove the 2 Month Notice is valid, the 2 Month Notice will be cancelled.

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 addition, when a tenant has filed to cancel a 2 Month Notice for Landlord’s Use of Property and

calls into question the “good faith” requirement, the onus lies on the landlord to prove that the 2 Month Notice was issued with an honest intention, with no ulterior motive to end the tenancy.

There was no dispute between the parties that the landlord has started renovations in the upper and lower storeys of the home. The rental unit is on the main storey of the home. As a result, I find it more likely than not that based on the evidence before me, that the landlord intends to renovate the rental unit versus to reside in the rental unit. I also note that the landlord did not attend the hearing to provide direct testimony or provide a signed statement for my consideration. Based on the above, I find that the landlord has failed to provide sufficient evidence to support that the 2 Month Notice was issued in good faith. Therefore, I **cancel** the 2 Month Notice dated October 1, 2019.

I order the tenancy to continue until ended in accordance with the *Act*.

I dismiss the landlord’s application without leave to reapply. As the landlord’s application was not successful, I do not grant the filing fee.

The tenant’s application is successful.

Conclusion

The 2 Month Notice is cancelled due to insufficient evidence that it was issued in good faith.

The Mutual Agreement is of no force or effect. The tenancy shall continue until ended in accordance with the *Act*.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: November 4, 2019

Residential Tenancy Branch