



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, CNL, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to have the landlords comply with the Act and tenancy agreement, and to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property, (the "Notice") issued on November 20, 2019 and to recover 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

Issues to be Decided

Should the landlords be ordered to comply with the Act, and tenancy agreement?
Should the Notice be cancelled?

Background and Evidence

Should the landlords be to order to comply with the tenancy agreement

The parties agreed that the tenant moved into the premise on October 31, 2019. The parties agreed that they had not entered into a written tenancy agreement as the terms were being negotiated.

The tenant testified that they moved into the rental unit without a signed tenancy agreement; however, they were always negotiating a fixed term agreement and it was just the other terms that had to be reconsidered.

The tenant testified that they would never had moved into the premise under a month to month agreement. The tenant stated they did not fully read the final tenancy agreement and they signed it; however, they were not aware the landlords had changed the

agreement to a month to month. The tenant stated that they seek the tenancy agreement to be changed to a fixed term.

The landlords testified that there was multiple draft of the tenancy agreement that the tenant would not sign. The landlord stated that on November 13, 2019, the tenant had the tenancy agreement and had lots of time to read the document before signing and there were changes made on that agreement at that time. The landlord stated that the tenant knew they could no longer offer a fixed term agreement as their father had passed a way and they were assessing their family situation.

Should the Notice be cancelled?

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 landlords have the burden of proving sufficient evidence to terminate the tenancy for the reasons given on the Notice.

The parties agreed that the Notice was served on the tenant indicating that the tenant is required to vacate the rental unit on January 31, 2020.

The reason stated in the Notice was that:

- 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 landlords testified that their father had passed away on November 8, 2019, and they have determined that they need the rental unit for their mother, as it is the perfect size and it is close to where they live, and they will be able to help her with her needs. The landlords stated the only other option was to put her in a care home, which is something the family does not want. Filed in evidence is a death certificate.

The tenant testified that they believe the landlord just wants them out of the rental unit as the landlord thinks they are demanding.

Analysis

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

Should the landlords be to order to comply with the tenancy agreement

In this case, the tenant moved into the rental unit without a signed tenancy agreement as the term of that agreement were still being negotiated. Without a written tenancy agreement, the tenancy would automatically be a month to month.

The tenant was presented with multiple drafts, which did include a fixed term; however, those contracts were never signed. The final tenancy agreement that was signed by both parties was a month-to-month agreement.

I do not accept the tenant's evidence that they did not have time to read the contract prior to signing, as there were changes made on the agreement. Further, I find it unreasonable that the tenant would sign a written legal agreement without reading, this does not have the "Ring of Truth". I find the tenancy signed by both parties on November 13, 2019, is a month to month agreement and is valid.

Should the Notice be cancelled?

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 landlords have provided sufficient evidence to show that:

- 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)

In this case, the landlords father unfortunately passed away just shortly after the tenancy commencing. This is supported by a death certificate.

The landlords mother needs family support and the rental unit is ideal for their use and is close by to the landlords. I find it not unreasonable that when a parent passes, that

the other parent wants to be closer to family and may need the assistance of family to live independently.

While I accept this is unfortunate for the tenant as their tenancy had just commenced. I find it was within the landlords right to end the tenancy as their family circumstances had changed.

I accept the tenancy started off in an unusual manner as the tenant was allowed to move into the premise without a signed agreement. I am not satisfied that the landlords have an ulterior motive, as there is no way the landlords could have know their family situation would change.

I find the Notice issued on November 20, 2019, has been proven by the landlords and is valid and enforceable .Therefore, I dismiss the tenant's application to cancel the Notice.

At the hearing the landlords indicated if the Notice is upheld they are agreeable to extend the effective date of the Notice to February 15, 2020. The landlord stated that if the tenant finds new living accommodations earlier, that they will waive their rights to receive a ten day notice, as they need the premise as soon as possible.

As I have found the Notice is valid and the landlords have agreed to extend the effective date of the Notice to February 15, 2020, I find the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **February 15, 2020 at 1:00PM**. A copy of this Order must be served on the tenant.

Since the tenant was not successful with their application, I find the tenant is not entitled to recover the filing fee from the landlords.

Conclusion

The tenant's application is dismissed. The landlords are granted an order of possession.

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: January 18, 2020

Residential Tenancy Branch