



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL FFT OLC

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for landlord's use of property, and for an order that the landlords comply with the *Act*, regulation or tenancy agreement, and to recover the filing fee from the landlords for the cost of the application.

The tenant and both landlords attended the hearing and each gave affirmed testimony. The tenant also called 1 witness who gave affirmed testimony. The parties were given the opportunity to question each other and the witness, and to give submissions.

No issues with respect to service or delivery of documents or evidence were raised and all evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Have the landlords established that the Two Month Notice to End Tenancy for Landlord's Use of Property was issued in accordance with the *Residential Tenancy Act* and in good faith?
- Should the landlords be ordered to comply with the *Act*, regulation or tenancy agreement with respect to a fixed term tenancy?

Background and Evidence

The first landlord (BM) testified that this tenancy began on a fixed term basis on July 1, 2013 which expired after 1 year and then reverted to a month-to-month tenancy, although the tenant actually moved in earlier. The tenant still resides in the rental unit. Rent in the amount of \$1,200.00 per month is payable on the last day of each month and there are no rental arrears. A security deposit was collected from the tenant at the beginning of the

tenancy, but the landlord does not recall the amount. The rental unit is a condominium apartment in a complex, and the landlords do not reside in the building.

The landlord further testified that the tenant was served with a Two Month Notice to End Tenancy for Landlord's Use of Property by registered mail, and a copy has been provided by the tenant for this hearing. It is dated November 11, 2019 and contains an effective date of vacancy of January 31, 2020. The reason for issuing it 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 landlords' son currently resides with the landlords and is now aged 22. His place of employment is much closer to the rental unit, and currently the commute is about an hour but if he resides in the rental unit he will have about a 15 minute walk to work each day. The landlords want the rental unit for their son to reside in.

The landlord denies entering into a fixed term tenancy for 10 years as indicated in the tenant's evidentiary material.

The second landlord (DM) testified that rent is payable on the 1st day of each month and there are no rental arrears. At the beginning of the tenancy the landlords collected a security deposit from the tenant in the amount of \$600.00 as well as a pet damage deposit in the amount of \$600.00.

The landlord also testified that the Two Month Notice to End Tenancy for Landlord's Use of Property was sent to the tenant by registered mail on November 14, 2019.

The landlord also testified that her son wants to move out of the landlords' home. She does not want her son to move out, but he's 22 and now a grown man and she has to let him become independent.

The tenant has been renting the unit for about 7 years and there has been no trouble. The landlord does not recall sending an email to the tenant stating that the tenancy would be for 10 years, but told the tenant she could stay as long as she likes, but now the landlords' son needs the rental unit to live in.

The tenant testified that the landlord told the tenant she could live there for 10 years and the tenant was never told that the landlords' son was going to move in. The tenant has provided a copy of an email from the landlord dated May 14, 2013 indicating that the tenant had to reside there for 10 years. The tenant signed a tenancy agreement that specified 1 year but does not have a copy.

The tenant seeks an order that the Two Month Notice to End Tenancy for Landlord's Use of Property be cancelled and that the landlords comply with the agreement for a 10 year lease.

The tenant's witness testified that he is a financial adviser and told the tenant to provide for him bank statements and a copy of the tenancy agreement. The tenant provided Telus bills to the witness and the witness "red flagged" it because the bills looked too high and told the tenant to talk to Telus. Telus advised that the bill was for 2 internet connections, one being for the landlords' home, which is a breach of trust.

The tenant cancelled her internet service in March, 2019. Following that, the tenant told the witness that the landlords talked to the tenant about her dog and about increasing rent.

In rebuttal, the landlord advised that the landlords paid the Telus bill and the tenant reimbursed the landlords separately. She has been a good tenant and the landlord is sorry it had to come to this.

Analysis

Firstly, where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, and in the case of a Two Month Notice to End Tenancy for Landlord's Use of Property (the Notice), the landlord must demonstrate good faith intent to use the rental unit for the purpose contained in the Notice.

The tenant has provided a copy of an email from the landlord indicating that the tenancy would be for 10 years, but that does not qualify as a fixed-term tenancy. There are no signatures and therefore no contract other than on a month-to-month basis.

The landlords have both testified that their son, who currently still resides with his parents, is now aged 22 and is employed close to the rental unit. I have no reason to doubt that, and I am satisfied that the landlords have demonstrated good faith intent. The law permits a landlord to end a tenancy for such a reason, and I decline to cancel the Notice. The tenant's application is therefore dismissed.

The *Act* also specifies that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an Order of Possession in favour of the landlord so long as the notice given is in the approved form. I have reviewed the Notice and I find that it is in the approved form and contains information required by the *Act*. Therefore, I grant an Order of Possession in favour of the landlords effective at 1:00 p.m. on January 31, 2020, which is the effective date contained in the Notice.

Since the tenant has not been successful with the application the tenant is not entitled to recovery of the filing fee.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed in its entirety.

I hereby grant an Order of Possession in favour of the landlords effective at 1:00 p.m. on January 31, 2020.

This order is final and binding and may be enforced.

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 23, 2020

Residential Tenancy Branch