



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

This hearing dealt with the tenants' application pursuant to the *Residential Tenancy Act* (the Act) for cancellation of the landlord's Two Month Notice to End Tenancy for Landlord's use ("the Notice") issued pursuant to section 49 (3).

Tenants CK and AJ and advocates JA and MK and the landlord JG attended. Each were given an opportunity to be heard, to present affirmed testimony, to make submissions and call witnesses.

The landlord confirmed receipt of the Notice of hearing and evidence from the tenants.

Preliminary Issued – Exclusion of landlord's evidence

The landlord affirmed he served his evidence by e-mail. The tenants affirmed they did not receive the evidence from the landlord.

I find the landlord did not serve his evidence in accordance with section 89(1) of the Act. As such, I excluded the landlord's evidence from consideration.

Preliminary Issue – Amendment to landlord's name

Pursuant to section 64(3)(a) of the Act, I amend the tenants' application to correct the landlord's surname.

Issue to be Decided

Is the landlord entitled to end the tenancy because a close family member of the landlord intends in good faith to occupy the rental unit, pursuant to the Notice issued under section 49?

Background and Evidence

While I have turned my mind to the accepted evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' claim and my findings are set out below.

The parties agreed that the tenancy started in February 2019, a written tenancy agreement was signed on November 01, 2019, rent is currently \$2,000.00 monthly, due on the last day of the previous month and the landlord still holds a \$1,000.00 security deposit and a \$1,000.00 pet damage deposit. A copy of the signed written tenancy agreement was provided. The tenants continue to reside at the rental property.

Both parties also agreed the Notice was served in person on January 28, 2020. The effective date of the Notice is March 31, 2020.

A copy of the Notice was provided. The reason to end the tenancy is: "The landlord is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit."

The landlord testified he is ending the tenancy so that he can move in with his family. He is currently commuting 80 minutes two times a day to take his children to school and get to work. The location of his job and the school has not changed since the tenancy began but the commute has become longer due to increased traffic. His daily commute from the rental unit would be two minutes. Also, he is living with his brothers and getting into disputes with them.

Tenant CK previously applied for dispute resolution before the RTB and was successful (the file number is referenced on the cover of this decision). The previous dispute was about the payment of the electricity bill and concluded the landlord was avoiding service from the tenants:

I find that the Landlord intentionally attempted to avoid service by failing to provide a proper address for service on the tenancy agreement, refusing to accept the registered

mail sent on January 4, 2020, and or moving without providing the Tenant with an updated address for service, by refusing to give the Tenant an updated address for service upon their request and then by deliberately failing to pick up the registered mail sent to them on January 29, 2020, at the address for service for the Landlord listed on the Two Month Notice.

The landlord affirmed the Notice is unrelated to the previous dispute.

Tenant CK affirmed the Notice was issued in bad faith. The landlord issued this Notice in retaliation for the previous dispute about the electricity bill.

Tenant CK provided copies of the text messages between him and the landlord exchanged prior to the Notice being issued. The text messages were exchanged between December 07, 2019 and January 20, 2020 and indicate the landlord and the tenant had some disagreements regarding a few tenancy issues.

On December 07 the tenant texted the landlord: "Good afternoon [landlord], I will need you to do something about the front stairs landing and walkway, it is unsafe to walk on. Too slippery. Please fix this before someone gets hurt attempting to come to our door."

The message sent by the tenant on December 09, 2019, states: "Good morning [landlord], just reminding you that today is your last day to respond to my requests regarding the bills. Now would be the time to propose a counter offer if you have one. If we do not come to an agreement by the end of the day I will begin the dispute processed through Arbitration".

The landlord replied on the same day: "No changes same as before since u are using more electrical sooo and still urs 70% and mine 30% Dec 31 last date to move REMBER that I AM MOVING IN THE 1st"

On the same date the tenant stated: "I have received no legal eviction notice", to which the landlord replied: "Loll – Hahaa – U will see".

On January 17, 2020, the tenant informed the landlord "I am still willing to negotiate and settle all matters out of court".

Analysis

Section 49(8) allows the tenant to challenge the Notice within 15 days. As the Notice was served on January 28, 2020 and the tenant filed on February 07, 2020 the tenant had filed this application in time.

Pursuant to Rule of Procedure 6.6, the landlord has the onus of proof to establish, on the balance of probabilities, that Notice to end tenancy is valid. Furthermore, Policy Guideline 2A states the landlord must demonstrate there is not an ulterior motive for ending the tenancy:

Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant, they do not have an ulterior motive for ending the tenancy, and they are not trying to avoid obligations under the RTA and MHPTA or the tenancy agreement.

The landlord's testimony was vague and not convincing. The landlord did not provide any details about the disputes with his brother.

I find the tenant's testimony and evidence is more credible and supported by the documentary evidence (text messages). The text messages between December 07, 2019 and January 20, 2020 indicate the landlord had previous issues with the tenants regarding hydro bills and other matters and wanted the tenants to leave the rental property. The landlord did not mention in any message that moving to the rental unit would reduce his commuting time.

I also find, based on the text messages and on the previous dispute resolution decision that the tenant was overall trying to solve disputes and continue the tenancy, and the landlord was only interested in ending the tenancy and adopting a belligerent response. I therefore accept the tenant's version that the landlord has an ulterior motive for issuing the Notice and it has not been issued in good faith.

Based on the above, I find that the landlord has not met the onus to prove he intends, in good faith, to occupy the rental unit and the Notice was issued as retaliation for the previous dispute between the parties. The Notice is therefore cancelled and of no force or effect. This tenancy will continue until it is lawfully ended in accordance with the Act.

Conclusion

The Two Month Notice to End Tenancy for Landlord's use is cancelled and of no force or effect.

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: April 02, 2020

Residential Tenancy Branch