



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking an order cancelling a notice to end the tenancy for landlord's use of property and to recover the filing fee from the landlord for the cost of the application.

The tenant and an agent for the landlord company 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.

The parties raised no issues with respect to exchange of evidence, and all evidence provided has been reviewed and is considered in this Decision.

Issues to be Decided

Has the landlord established that the Two Month Notice to End Tenancy for Landlord's Use of Property was given in accordance with the *Residential Tenancy Act* and in good faith?

Background and Evidence

The landlord's agent testified that he is the owner of the landlord company and as such has voting shares in the company.

This month-to-month tenancy began on May 1, 2016 and the tenant still resides in the rental unit. Rent in the amount of \$540.00 per month was payable at the beginning of the tenancy which has increased and is now \$573.00 payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$270.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a 1

bedroom apartment suite on the 2nd floor of a complex containing 16 suites, and a copy of the tenancy agreement has been provided as evidence for this hearing. The landlord's agent does not reside on the rental property.

The landlord's agent further testified that on July 20, 2020 the landlord served the tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property (the Notice) by registered mail, and a copy has been provided as evidence for this hearing by the tenant. It is dated July 20, 2020 and contains an effective date of vacancy of September 30, 2020. The reason for issuing it states: "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's agent and his wife and son have been living with his brother. The brother's son is getting married and the couple intends to stay with their parents, and the landlord's brother asked the landlord to find alternate accommodation because there's not enough space. The landlord's family lives in the basement suite and his brother lives in the upper level. The landlord intends to move into the rental unit, which is a 1 bedroom suite, and their son will occupy another suite in the building. The landlord has issued a similar notice to end the tenancy in the suite that he intends his son to occupy. That tenant is the witness who has been called by the tenant. That tenant also disputed the Notice given by the landlord and a hearing was held this morning. No result has yet been issued by the Arbitrator.

In February, 2020 the landlord issued a notice that the landlord would be charging for covered parking at a fee of \$50.00 extra, but the tenant refused to sign a new parking agreement. On March 1, 2020 the landlord called the tenant to his office asking for the tenant to sign the agreement, but the tenant said it was illegal and would contact the Residential Tenancy Branch prior to signing. On March 9, 2020 the landlord arrived at the office and found an unsigned agreement with a sticky note from the tenant, but the tenant finally agreed to pay for the parking. The landlord raises this issue because the tenant's evidence talks about the landlord asking for an increase in rent to \$750.00 in March which is not true. The landlord only gave 30 days notice about parking and tenants had the option of parking on the street or paying an additional \$50.00 per month to park in the covered parking area.

The landlord testified that he needs the space for himself and his wife and son, and has issued the Notice in good faith. Statutory Declarations from the landlord, and from the landlord's brother stating that he asked the landlord to find alternative accommodation by the end of September, 2020 have been provided as evidence for this hearing.

The tenant testified that the landlord's motive is a renoviction, not for landlord's use of property. In March, 2020 the landlord asked to increase rent to \$750.00 but the tenant said it was illegal because rent had already been raised in January. Then the tenant received the Two Month Notice to End Tenancy for Landlord's Use of Property. Tenants in another rental unit told the tenant in March, 2020 that they would have to move out if they didn't agree to the increase, and they didn't get an eviction because they agreed to pay the increase.

The tenant started to pay the extra \$50.00 per month for covered parking on April 1, 2020.

The tenant's witness testified that the tenant told him that the landlord said he wanted to increase rent by more than allowed, and he did the same to a neighbour. The neighbour asked to be anonymous, but they agreed to the increase.

The witness also received a Two Month Notice to End Tenancy for Landlord's Use of Property, and would have received it in March, but due to COVID-19 the landlord could not do so, but the very first day the landlord was allowed to do so, the landlord served the Notice.

The witness further testified that the landlord knows that the witness is on disability and doesn't have the ability to pay more, and didn't ask for more rent. However, in March, 2020 the landlord approached the witness and told him that he had to leave. The landlord tried to evict the witness 2 years ago for a different reason, saying that the witness rented his unit as a caretaker, which was not true. The witness only agreed to do some chores in exchange for not increasing and decreasing the rent. The parties agreed that the witness could stay.

Another tenant in the building also received a notice to end his tenancy around the last week of March citing that the landlord intended to occupy that rental unit, and the witness assisted him in applying on-line to dispute it. That tenant was also on disability and committed suicide in April prior to the hearing. He got his notice to end the tenancy prior to the landlord approaching this tenant to raise the rent. The landlord did not occupy the rental unit but new tenants are in there now that are not related to the landlord.

Two other units were available for the landlord from March to June. The landlord renovated those units and they were rented for \$1,300.00 and \$1,400.00 per month right after renovations. Another 1 bedroom unit is also now empty.

SUBMISSIONS OF THE LANDLORD:

The landlord does not dispute that another 1 bedroom unit is now empty, but wants to move to the second floor of the building.

SUBMISSIONS OF THE TENANT:

The landlord's motive is to increase rent. Two units were available from March to June, and were vacant when the landlord gave the Notice. Those tenants that did not agree to a rent increase received notices to end their tenancies. The tenant does not believe the landlords family will move into the rental unit; it's a renoviction and they will raise the rent. It's all about money.

Analysis

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*. Further, where a landlord gives a notice to end a tenancy for landlord's use of property, the onus is on the landlord to establish good faith intent to use the rental unit for the purpose contained in the Notice.

The landlord did not dispute any of the testimony of the tenant's witness. The witness testified that the landlord gave another notice to end the tenancy of another tenant who committed suicide, and the notice said that the landlord was going to reside in the rental unit. No family members have moved into that unit. The witness also testified that 2 other units were available for the landlord to move into from March to June, 2020 but instead renovated them and re-rented for much more than the tenant pays.

In the circumstances, I am not satisfied that the landlord has demonstrated good faith intent to use the rental unit for the purpose contained in the Notice. The notice to end the tenancy is therefore cancelled and the tenancy continues.

Since the tenant has been successful with the application the tenant is also entitled to recovery of the \$100.00 filing fee. I grant a monetary order in favour of the tenant in that amount and I order that the tenant be permitted to reduce rent for a future month by that amount or may otherwise recover it.

Conclusion

For the reasons set out above, The Two Month Notice to End Tenancy for Landlord's Use of Property dated July 20, 2020 is hereby cancelled and the tenancy continues.

I hereby grant a monetary order in favour of the tenant as against the landlord in the amount of \$100.00 and I order that the tenant be permitted to reduce rent for a future month by that amount or may otherwise recover it.

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: August 28, 2020

Residential Tenancy Branch