



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 landlord and both tenants attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions.

Neither of the parties opposed inclusion of any 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 issued in accordance with the *Residential Tenancy Act* and in good faith?

Background and Evidence

The landlord testified that this month-to-month tenancy began on October 1, 2019 and the tenants still reside in the rental unit. A copy of the tenancy agreement has been provided by the tenants as evidence for this hearing. Rent in the amount of \$1,500.00 is 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 tenants in the amount of \$750.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a suite in the upper floor of a house, and the basement is also tenanted. The landlord does not reside on the property.

The landlord further testified that on September 24, 2020 the landlord served the tenants with a Two Month Notice to End Tenancy for Landlord's Use of Property by leaving it in the

tenants' mailbox. The landlord has not provided a copy, however copies of 3 such notices have been provided for this hearing by the tenants, all dated September 24, 2020 and containing an effective date of vacancy of December 31, 2020. The reason for issuing them 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)." They also state that the close family member who will occupy the unit is the landlord or the landlord's spouse.

The landlord testified that he intends to live in the rental unit himself. The landlord does not have a spouse and is currently residing at his mother's house, and she wants him to move out. The landlord was in a relationship but it failed, and now needs to move into the rental unit with his adult child. The landlord has 2 properties, all of which are rented, and wants this rental unit because he wants to run his business out of the home. The landlord is a home inspector and does home renovations. All of the landlord's work "stuff" is in the garage at the rental home.

The landlord is aware of the compensation required under the *Residential Tenancy Act* and testified that the tenants have paid rent for this month by e-transfer, but the landlord has not yet accepted it.

The parties had been to a dispute resolution hearing prior, and the landlord testified that he lost that case because he wasn't prepared document-wise. The landlord's lawyer told the landlord to get his intentions notarized, which he did. Three notarized letters have been provided as evidence for this hearing. The first is dated November 28, 2020, which is letter from another tenant complaining about smoking, noise and the tenants failing to contribute to yard maintenance. The second is from the landlord's mother, dated November 20, 2020 stating that it will be best for her health that the landlord move into his own home. The third is made by the landlord dated November 20, 2020 stating that the landlord has met the RTB requirements of the application of the landlord's use under the Act and good faith.

The first tenant (YD) testified that since April the landlord has been constantly harassing the tenants. Each time there's a dispute, there are different excuses of why he wants the tenants to move out. A copy of an email has been provided for this hearing dated April 2, 2020 from the landlord to the tenants stating that when allowed to, the landlord will serve the tenants with eviction papers for cause, due to unlicensed vehicles and trailers.

There have been 2 previous hearings; this is the third.

The tenants have provided a copy of a One Month Notice to End Tenancy for Cause dated June 30, 2020 with an effective date of vacancy of July 30, 2020, which states that the reason for issuing it is "Breach of a material term of the tenancy agreement that was not

corrected within a reasonable time after written notice to do so.” The tenant testified that the tenants disputed it. The hearing was July 31, 2020 and the Notice was cancelled; the tenants had provided proof that the vehicle was insured and the tenancy agreement was not breached. A copy of the resulting Decision has been provided for this hearing.

The day after the hearing, the landlord served a Two Month Notice to End Tenancy for Landlord’s Use of Property, and a copy has been provided for this hearing. It is dated August 1, 2020 and contains an effective date of vacancy of September 30, 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).” It also states that the landlord or the landlord’s spouse and the child of the landlord or landlord’s spouse will be occupying the rental unit. The tenants disputed the Notice and a hearing was held on September 16, 2020. The resulting Decision, provided for this hearing, states that the landlord failed to establish good faith intent and the Notice was cancelled.

Right after the last dispute resolution hearing, the landlord gave notice to enter the rental unit. When the landlord came to the door with his son, the tenants asked them to wear masks. He also refused to take off his shoes, telling the tenants to “F__ yourself.”

With respect to this dispute, there were 3 notices to end the tenancy sent to the tenants, all with the same information. The landlord banged on the front door, then to the back door banging and swearing. He said that it doesn’t matter what the Residential Tenancy Branch said, he’ll keep slapping notices on the tenants. A video has been provided for this hearing, and the tenant testified that the parties spoke through the door. The landlord put a Notice on the table and was very aggressive, then left with the Notice, went to the front yard to put it in the mailbox, then came back later and put it on the door. He also sent one by registered mail.

The address of the landlord is different on different documents, so the tenants did Title searches and found that the landlord has other properties. There were 2 tenants prior to this tenancy, and the landlord always had his business out of the garage, so the tenant does not understand why he doesn’t pick one of his other properties. At the last hearing, the landlord said he was renting. This Notice is not due to a change in the landlord’s circumstances.

The second tenant (JA) testified that he contacted the landlord on April 8 about repair to the deck on the rental home, but the answer was, “Don’t bother, you’re moving.” A copy of the string of text messages has been provided for this hearing.

The tenancy agreement shows the landlord's address as the same address of the rental unit. Prior to the last Notice shows that he lived with his mother, but 2 prior ones show his address as the lower suite in the rental home, but there are other tenants in the basement suite.

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*, and in the case of a Two Month Notice to End Tenancy for Landlord's Use of Property, the landlord must demonstrate good faith intent to use the rental unit for the purpose contained in the Notice.

This is the third hearing regarding the landlord issuing notices to end the tenancy. The issue before me has nothing to do with complaints of other tenants, and therefore I find that the Notarized letter from neighbours is not relevant to this dispute. I have reviewed the previous Decisions as provided by the tenants for this hearing.

In this dispute, I refer to the first tenant's testimony that the landlord said that it doesn't matter what the Residential Tenancy Branch said, he'll keep slapping notices on the tenants. I also take note that the day after the July 31, 2020 hearing regarding a One Month Notice to End Tenancy for Cause, the landlord issued a Notice to end the tenancy for landlord's use of property. The September 16, 2020 Decision regarding that Two Month Notice to End Tenancy for Landlord's Use of Property shows that the Notice was issued on August 1, 2020, and the landlord issued another Two Month Notice to End Tenancy for Landlord's Use of Property, the subject of this hearing, 8 days after the September 16 hearing.

The landlord claims that his personal circumstances have changed. The landlord testified in the September 16 hearing that the landlord works in the service industry and is suffering financially due to the pandemic and as a result he and his son must occupy the rental unit, and that the landlord was renting. In this hearing, the landlord testified that he was in a relationship, which failed, and is currently residing with his mother. The letter from the landlord's mother does not indicate when the landlord moved in, and I question how the circumstances changed in 8 days between the last hearing and the issuance of another Notice.

The landlord has already had at least 2 opportunities, and failed, to obtain possession of the rental unit. Issuing another Two Month Notice to End Tenancy for Landlord's Use of Property is not meant in law to give the landlord another opportunity to prove good faith,

and I find that doing so 8 days after a hearing that did not result in a finding of good faith, is an abuse of process, and I cancel the Notice, and the tenancy continues.

Since the tenants have been successful with the application, the tenants are also entitled to recovery of the \$100.00 filing fee, and I grant a monetary order in favour of the tenants in that amount, and I order that the tenants 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 September 24, 2020 is hereby cancelled and the tenancy continues.

I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$100.00, and I order that the tenants 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: December 05, 2020

Residential Tenancy Branch