



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNQ-MT, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants filed under the Residential Tenancy Act (the “Act”) to cancel a Two Month Notice to End Tenancy issued Because the Tenant Does Not Qualify for Subsidize Rental Unit and to recover the cost of 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.

Preliminary and Procedural issues

In this matter, the tenants have disputed a Two Month Notice to End Tenancy issued Because the Tenant Does Not Qualify for Subsidize Rental Unit; however, that was an obvious error in completing their online application since the notice in dispute is a Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Notice”). Therefore, I have amended their application to reflect the proper name of the notice to end tenancy that is before me. I find this is not prejudicial to either party.

The tenant testified that they did not receive any evidence from the landlord. The landlord stated that their evidence was posted to the door of the rental unit on December 12, 2020, five days before the hearing. The tenant testified that they did not receive that evidence because they have been in the hospital for the last ten days and is calling from the hospital. This was confirmed by the social worker.

Since the tenants were not served with the landlord’s evidence at least 7 days prior to the hearing, I find I must exclude that evidence from this hearing as this was not in compliance with the Residential Tenancy Branch Rules of Procedure.

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 landlord has the burden of proving sufficient evidence to terminate the tenancy for the reasons given on the Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Should the Notice be cancelled?

Background and Evidence

The tenancy began on May 1, 2015. Rent in the amount of \$700.00 was payable on the first of each month. The tenant stated they paid a security deposit of \$500.00. The landlord was unable to confirm the amount at today's hearing.

The parties agreed that the Notice was served on the tenants indicating that the tenants are required to vacate the rental unit on November 30, 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 landlord testified that their son was going to university that was located in another geographical location. The landlord stated that when the state of emergency was declared all of their son's classes went online.

The landlord testified that due to this their son has moved back home; however, he and his girlfriend want to move into the rental unit, which is the basement of the family home and also use it for studying.

The tenant testified that the landlord lives above them and they have three bedrooms which is more than enough to accommodate their son and his girlfriend. The tenant stated that although they have no proof, they were told that if they paid more rent than the landlord would continue to have their son live with them.

Analysis

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

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 landlord has 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, I accept the evidence of the landlord that their son and his girlfriend will be occupying the basement unit of the family home due to their school courses now being available online, due to the current state of emergency. I find that is reasonable and has the "ring of truth". Further, it is not unreasonable for the landlord's son and his girlfriend want their own space as they are young adults.

Further, there is no supporting evidence that leads me to believe the landlord is simply evicting the tenant's in order to obtain a higher rent.

I find the Notice issued on September 30, 2020, has been proven by the landlord and is valid and enforceable. Therefore, I find the tenancy legally ended on November 30, 2020, and the tenants are overholding the rental unit as occupants.

As the landlord has accepted occupancy rent for the month of December 2020. I find it appropriate to extend the effective vacancy to **December 31, 2020**. Therefore, I find the landlord is entitled to an order of possession effective on the above date.

Since the tenants were not successful with their application, I find the tenants are not entitled to recover the filing fee from the landlord.

The landlord is to ensure the tenants received their compensation equal to one month rent for receiving the Notice, as required by the Act. The landlord was also cautioned at

the hearing that if the rental unit is not used for the stated purpose for at least six months they could be liable to pay the tenants the equivalent of 12 months of rent.

Conclusion

The tenants' application to cancel the Notice is dismissed. The landlord is 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: December 17, 2020

Residential Tenancy Branch