



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 tenant's application pursuant to the *Residential Tenancy Act* (the "**Act**") for the cancellation of the landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the "**Notice**") pursuant to section 49.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord was assisted at the hearing by his building manager ("**DR**").

The tenant testified he served that the landlord with the notice of dispute resolution form and supporting evidence package via registered mail on October 15, 2020 to the address for service listed on the Notice. He provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. The landlord testified that he knew that a package was delivered but did not retrieve it.

Section 89 of the Act permits service of application materials by registered mail, and section 90 of the Act deems them served five days after their mailing. I find that the landlord is deemed served with the tenant's materials on October 20, 2020, five days after they were mailed.

The landlord did not provide any documentary evidence in response to the tenant's application.

Issues to be Decided

Is the tenant entitled to an order cancelling the Notice?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The tenant and JW (a former tenant of the rental unit) entered into a tenancy agreement with the former owners of the residential property on February 1, 2013. The landlord purchased the residential property in April 2019. Monthly rent is \$1,227. The tenant

provided a security deposit to the former owners of \$550. DR confirmed that the landlord continues to hold this amount in trust for the tenant.

On September 29, 2020, the landlord served the Notice on the tenant. The Notice indicated that the landlord was ending the tenancy so that his son could move into the rental unit. The effective date of the Notice was December 1, 2020.

The landlord testified that his son and his son's girlfriend have been negatively affected by the COVID-19 pandemic and cannot afford to live in their current apartment (which is located five blocks away from the rental unit). The landlord testified that he intends for his son to live in the rental unit for the foreseeable future.

The landlord did not provide any documentary evidence corroborating this testimony (such as proof of his son's current tenancy or his son's financial circumstances) and neither the landlord's son nor his son's girlfriend provided a written statement relating to these matters and neither were called as witnesses at the hearing.

The tenant testified that the Notice represents the third time the landlord has attempted to end the tenancy this year. He testified that in February 2020, he was served with a one month notice for cause, which he disputed. The matter came to a hearing in September 2020, and the presiding arbitrator cancelled the notice. The tenant testified that the landlord has attempted to "bribe" him to leave the rental unit by offering him \$2,500, or two months' free rent and a job, in January 2020. The tenant submitted an audio recording of this conversation.

The tenant also alleged that the landlord "harassed" him by continually coming to the rental unit, on one occasion at 11:30 pm, to talk.

The tenant argued that the prior eviction attempts, the "bribe" and the "harassment" indicate that the landlord did not issue the Notice in good faith. He contended that the landlord wanted to end the tenancy so as to be able to re-rent the rental unit for increased rent.

The landlord admitted that he offered the tenant a job and offered to pay him \$2,500 to vacate the rental unit. He denied harassing the tenant. He testified that, one night, he was walking by the rental unit, saw the tenant outside, and spoke to him.

The landlord argued he issued the Notice in good faith, and that he needs the rental unit for his son's use.

Analysis

Section 49(2) and (3) of the Act states:

Landlord's notice: landlord's use of property

- (2) Subject to section 51 [*tenant's compensation: section 49 notice*], a landlord may end a tenancy
- (a) for a purpose referred to in subsection (3), (4) or (5) by giving notice to end the tenancy effective on a date that must be
 - (i) not earlier than 2 months after the date the tenant receives the notice,
 - (ii) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
 - (iii) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy, or
- (3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Section 49(1) of the Act states:

- “close family member” means, in relation to an individual,
- (a) the individual's parent, spouse or child, or
 - (b) the parent or child of that individual's spouse;

Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

So, the landlord bears the onus to prove that his son intends in good faith to occupy the rental unit.

The landlord has provided no evidence corroborating his assertion that his son needs to move into the rental unit. I have only his testimony on the matter. I would have expected that the landlord's son would have attended the hearing to give testimony as to his reasons for needing to occupy the rental unit. At the very least, I would have expected a written statement.

I cannot say what the landlord's son currently pays in monthly rent (which may be relevant in evaluating the reason provided for the move). I have nothing to corroborate any aspect of the landlord's testimony. I have only a brief, unsupported statement from the landlord asserting a need for the rental unit.

More is required in order to discharge the landlord's evidentiary burden and for me to order that the tenancy be ended.

I find that the landlord has failed to prove it is more likely than not that his son intends to move into the rental unit. It is not necessary for me to consider any of the tenant's arguments relating to the landlord's true intentions for issuing the Notice. The landlord has failed to prove his own case, so it is not necessary to evaluate the tenant's.

The Notice is cancelled and of no force or effect. The tenancy shall continue.

Conclusion

I grant the tenant's application and cancel the Notice.

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 21, 2020

Residential Tenancy Branch