



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Home Life Advantage Realty Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice"), pursuant to section 49;

MH ("landlord") appeared as agent for the landlord in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

The landlord confirmed receipt of the tenant's application for dispute resolution ('application') and evidence package. In accordance with sections 88 and 89 of the *Act*, I find that the landlord was duly served with the tenant's application and evidence package. The landlord did not submit any written evidence for this hearing.

As the tenant confirmed receipt of the 2 Month Notice dated November 24, 2020, which was posted on her door on the same date, I find that this document was deemed to have been served 3 days after posting in accordance with sections 88 and 90 of the *Act*.

Issues(s) to be Decided

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on October 1, 2014, with monthly rent set at \$904.80, payable on the first of the month. The landlord collected a security deposit in the amount of \$375.00, which they still hold.

The landlord issued the 2 Month Notice dated November 24, 2020, with an effective move-out date of January 31, 2021 for the following reason:

- The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse.

The landlord noted on the 2 Month Notice that the family member would be the father or mother of the landlord or landlord's spouse.

The tenant disputed the 2 Month Notice as she does not believe that the 2 Month Notice was issued in good faith. The tenant testified that she does not have a positive relationship with the landlord's agent, MH. Furthermore, the tenant testified that the home is a 5-plex, and at the time the 2 Month Notice was issued, there were two other vacant units. The tenant also questioned why her specific unit was selected as the landlord could have served any of the other tenants with a 2 Month Notice instead. The tenant testified that there was another unit in the 5-plex which did not have stairs. The tenant notes that her rent is fairly low, and the landlord may have intentions of renovating and re-renting the unit for at least double the monthly rent.

The agent for the landlord testified that he is simply acting on the instructions of the owner, who informed him by email on November 19, 2020 that the mother of the owner wished to move in. The agent testified that they required a unit with no stairs, and that the other two vacant units had stairs. The agent testified that those two vacant units are now rented out.

Analysis

Subsection 49(3) of the *Act* sets out that a landlord 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.

Residential Tenancy Policy Guideline 2: Good Faith Requirement When Ending a Tenancy states:

“If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy.

If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate that they do not have an ulterior motive for ending the tenancy.”

Although the landlord stated that they had issued the 2 Month Notice in order for the mother of the landlord to move in, I find that the tenant had raised doubt as to the true intent of the landlord in issuing the 2 Month Notice. The burden, therefore, shifts to the landlord to establish that they do not have any other purpose to ending this tenancy.

Although the landlord provided a satisfactory reason for why the mother of the landlord did not move into one of the two vacant units instead, I find that the landlord failed to provide a reasonable explanation why the tenant was issued the 2 Month Notice when there was another rental unit in the home without stairs. Furthermore, I find that although the landlord's agent confirmed that he was given instructions to issue the 2 Month Notice, the landlord did not provide a reasonable explanation for why no written evidence or sworn testimony was submitted to support that the parent of the landlord was moving in. As noted above the burden of proof is on the landlord to show that the 2 Month Notice was issued in good faith. I find that the landlord has not satisfied me that they have no ulterior motive in ending this tenancy. Accordingly, I allow the tenant's application to cancel the 2 Month Notice. The landlord's 2 Month Notice, dated November 14, 2020, is hereby cancelled and is of no force and effect. This tenancy is to continue until it is ended in accordance with the *Act*.

Conclusion

The tenant's application to cancel the landlord's 2 Month Notice is allowed. The Landlord's 2 Month Notice, dated November 24, 2020, is cancelled and is of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

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: January 29, 2021

Residential Tenancy Branch