



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL-4M, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the “Act”), to cancel Four Month Notice to End Tenancy for Demolition, Renovation, or Conversion to Another Use (the “Notice”) issued on December 27, 2020 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.

The parties confirmed that they have exchanged evidence and there was no dispute of the review of the evidence submitted.

The parties confirmed that they were not making any unauthorized recording of this hearing in compliance with Rule 6.11 of 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 reason 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 April 5, 2004. Current rent in the amount of \$994.00 was payable on the first of each month. The tenant paid a security deposit of \$350.00.

The parties agreed that the Notice was served on the tenant indicating that the tenant is required to vacate the rental unit on April 30, 2021. The reason stated in the Notice was to convert the rental unit for use by a caretaker, manager, or superintendent of the residential property.

The landlord testified that they own two properties that are within two blocks of each other and that they have decided to hire a caretaker to take care of both rental properties because they are unable to do so because of a back injury. Filed in evidence are letters for multiple health care professionals.

The landlord testified that they had advertised for a live-in property manager and they have entered into an employment contract that is to commence on May 1, 2021. Filed in evidence is a copy of the employment contract, dated February 16, 2021.

The landlord testified that they have issued the Notice in good faith.

The tenant testified that the landlord has not issued the Notice in good faith. The tenant stated that the premise where they live consists of two units, and that they live in the upper portion of the home. The tenant stated that the landlord was upset because they could not give the yearly rent increase that would take effect in December 2021 and simply wants more rent.

The tenant testified that they have lived in the premise for 17 years and the landlord has not been the one that does the maintenance. The tenant stated that they have done most of the maintenance on their own, such as cleaning the gutters, making repairs, yard work, shoveling snow from the walkways. The tenant stated that when something needs to be done, that the landlord always hires someone to do the work.

The landlord argued that they have made repairs, such as changing faucets; however, they will hire workers, when they don't know how to make the repair, such as electricians and plumbers.

The landlord argued that the tenant does make repairs, without their consent and the work is of poor quality, as the photographs provided, show the fence was not properly

repaired, the yard is poorly maintained and the snow removal is not being done. The landlord stated that they need the live-in property manager to maintain both properties and take care of the issues of the tenancies. The landlord stated that the only reasons they chose the tenant's rental unit was because they wanted a family, and this would mean that there would always be someone home to care of the issues that arise.

Analysis

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

I am not satisfied that the landlord has issued the Notice for the reason stated or that the Notice was issued in good faith, I find it more likely than not that the landlord issue the Notice to obtain a higher rent. I make this finding based on the following reasons.

In this case, I accept the landlord has back issues that is supported by the documentary evidence. However, I find the comments made in two of the letters submitted as evidence stating the landlord would benefit from a caretaker is simply self reporting as the health care providers have no knowledge about the facts of this tenancy.

Further, I am troubled by the Employment Contract (the "Contract") the landlord has filed as evidence, which is dated February 16, 2021. The agreement in part reads as follows,

"The Employer agrees to employ the Employee as a Property Manager/Caretake for 2 hours per week. The Employee will be expected to perform the following job duties: Responsible for all Landlord/Tenancy situations. Along with being responsible for all maintenance for buildings located at [addresses removed]. Hours of work may vary from week to week with no guaranteed minimum hours. The employee will be paid a minimum of \$50 per month for being on call or a minimum of two hours of work that month..."

[Reproduced as written.]

This does not support that there is any requirement for a live-in caretaker, and for the caretaker to be limited to \$50.00 per month for being on call for 24/7 is just not reasonable, and so is restricting the work to 2 hours per week, which is not guaranteed. The Contract also states the employee is on probation for three months and there is no provision that the rental premise is provided as a condition of employment.

The landlord has also provided in evidence a copy of a new one-year fixed term tenancy agreement (the "Agreement") that the landlord signed with the new renter on January 31, 2021, which I note is four days after the tenant made their application disputing the Notice.

The Agreement was signed before the landlord entered into the Contract for employment and is a standard one-year fixed term tenancy agreement. Rent payable in the Agreement is \$1,250.00, which is \$256.00 per month greater than what the tenant is currently paying and is just over a 25% increase in rent. Under the Agreement there is nothing that would lead me to believe that this is for the purpose of being a caretaker. Neither the landlord nor the new renter under the Agreement would have the right to end the tenancy should either party want to end the employment. I find this unreasonable if this rental unit was is to be used for employment purposes.

I find that the landlord has entered into two separate contracts. One is for the purposes of employment, meaning an employer and employee relationship and the other is a rental agreement, meaning a landlord and tenant relationship. There is nothing that leads me to believe that they are related.

Based on the above, I find the landlord has failed to prove the Notice. Therefore, I grant the tenant's application and cancel the Notice. The tenancy will continue until legally ended under the Act.

As the tenant was successful with their application, I find the tenant is entitled to recover the cost of the filing fee from the landlord. I authorize the tenant to deduct the amount of \$100.00 from a future rent payable to the landlord in full satisfaction of this award.

Conclusion

The tenant's application to cancel the Notice, is granted. The tenant is authorized a one-time rent reduction in the amount of \$100.00 from a future rent payable to recover the cost of the filing fee from the landlord.

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: April 29, 2021

Residential Tenancy Branch