



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OPL, FF

Introduction

This was a cross-application hearing for Dispute Resolution under the *Residential Tenancy Act* (“the Act”). The matters were set for a conference call hearing.

On February 12, 2021, the Tenant applied to cancel a Two Month Notice to End Tenancy for Landlord’s Use of Property.

On March 6, 2021, the Landlord applied for an order of possession based on the issuance of a Two Month Notice to End Tenancy for Landlord’s Use of Property.

The Tenant and Landlord attended the hearing. I introduced myself and the participants. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present oral testimony and to make submissions during the hearing.

The parties stated that they exchanged the documentary evidence that I have before me. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision. The parties were informed that recording the hearing is not permitted.

Issue to be Decided

- Is the tenancy ending based on the Two Month Notice to End Tenancy for Landlord’s Use of Property?
- Is the Landlord entitled to an order of possession for the rental unit?

Background and Evidence

The Landlord and Tenants testified that the tenancy began on August 1, 2018 as a one-year fixed term tenancy that continued thereafter on a month to month basis. Rent in the amount of \$1,800.00 is to be paid to the Landlord before the first day of each month. The Tenant paid the Landlord a security deposit in the amount of \$880.00.

The Landlord issued the Tenant a Two Month Notice to End Tenancy for Landlord's Use of Property dated January 29, 2021 ("the Two Month Notice"). The reason cited for ending the tenancy within the Notice is:

The rental unit will be occupied by the Landlord or the Landlords close family member. The Landlord or the Landlord's spouse.

The effective date (the date the Tenant must move out of the rental unit) on the Two Month Notice is March 31, 2021.

The Two Month Notice provides information for tenants who receive the notice. The notice provides that a tenant has the right to dispute the notice within 15 days after it is received by filing an Application for Dispute Resolution at the Residential Tenancy Branch.

The Tenant disputed the Two Month Notice on February 12, 2021, within the required time period.

The rental unit is a duplex with an upper and lower unit rented under separate tenancy agreements. The Tenant lives in the upper rental unit. The Landlord provided testimony in support of ending the tenancy. The Landlord stated that she issued a notice to end tenancy to the upper tenant and to the lower tenant living on the rental property. She testified that due to a strata fee increase and her daughter working from home, the rental units and location work better for the Landlord's needs.

In response to the Landlord's testimony, the Tenant testified that she is a single mother living on disability and going through a custody battle. She stated there are no rental units available for her and she may be homeless.

The Tenant raised the issue of good faith and ulterior motive. She stated that a previous occupant of the unit told her that the home may be put up for sale. The Tenant stated that when she asked the Landlord if the rental unit was being listed for sale the Landlord replied "no". The Tenant then stated that the home never went up for sale.

The Tenant stated that the relationship with the Landlord deteriorated because the downstairs occupant was disturbing her sleep by partying. The Tenant testified that she

reported her concerns in 2018 and 2020 to the Landlord who took no action and stated that she is not intervening at this time. The Tenant submitted that after she raised her concern, the Landlord ended her tenancy. The Tenant stated that the Landlord bullies people when there is conflict. The Tenant referred to an undated text message where the Landlord indicates she paid a tenant a half months rent to go away after she locked them out.

The Tenant stated that she lost her job and is on disability and informed the Landlord of this on January 8, 2021. The Tenant suggested that the notice to end tenancy may have been issued for this reason. The Tenant testified that she has never missed paying the rent.

The Tenant stated that the Landlord has entered into an agreement with the occupant of lower rental unit to rent the home the Landlord is vacating. The Tenant suggested that this is not good faith and questioned why the Landlord would not offer the unit to her first. The Tenant suggested that the Landlord is moving into her unit and not the upper unit and stated that the Landlord's current home is larger than the rental unit.

In response to the Tenant's testimony, the Landlord stated that she intends to occupy the upper unit and lower rental units for a combined space of five bedrooms and three bathrooms. The Landlord testified that the combined space of the units is larger than the three bedroom and two-bathroom place she currently occupies.

The Landlord testified that the Tenant losing her job is not the reason for ending the tenancy and that she was informed of this by the Tenant after the notice to end tenancy was issued.

With respect to the Tenant's reports of noise disturbances, the Landlord stated that she spoke to the lower occupant and cautioned her about making noise. The Landlord pointed out that due to Covid 19, evictions were not permitted for a period of time. The Landlord stated that the notice to end tenancy issued to the Tenant is not related to complaints she received from the Tenant.

The Landlord testified that the Tenant has missed paying the rent and is two months in arrears owing \$3,600.00.

The Tenant acknowledged that the May 2021 rent was not paid.

Analysis

Residential Tenancy Policy Guideline # 2A Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member addresses the requirements for ending a tenancy for Landlord's use of property and the good faith requirement. The Guideline provides that the Act allows a Landlord to end a tenancy under section 49, if the Landlord intends, in good faith, to move into the rental unit, or allow a close family member to move into the unit. The Guideline explains the concept of good faith as follows:

"Good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant, they do not have an ulterior motive for ending the tenancy, and they are not trying to avoid obligations under the RTA and MHPTA or the tenancy agreement."

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

I find that the Landlord issued the Tenant a Two Month Notice to End Tenancy for Landlord's Use of Property dated January 29, 2021.

I accept that the Tenant may be experiencing hardship due to her personal circumstances and the difficulty in finding an available rental unit; however, the Act does not list hardship as a ground to dispute a notice to end tenancy.

The Tenant's submission regarding an intention of the Landlord to sell the rental property is not a relevant factor. A Landlord may sell their home at anytime and the purchaser must accept the existing tenancy if the purchaser does not intend to occupy the rental unit. In any event, the rental property was not sold.

The Tenant's submission regarding the Landlord offering the lower Tenant a tenancy before offering it to her is also not relevant. The Landlord has the right to choose who she offers the unit to unless the property contains 5 or more rental units and the notice to end tenancy was issued due to renovations or repairs. There is no obligation under the Act that the Landlord had to offer it to the Tenant.

I have also turned my mind to whether or not the Landlord has an ulterior motive to end the tenancy. I am not convinced that the Landlord ended the tenancy due to old noise complaints made by the Tenant or based on the Tenants source of income. The Landlord ended both tenancies at the dispute address with the intention to occupy both

units. The Landlord paying off a previous tenant to go away, does not raise sufficient doubt in my mind on the Landlords intention to occupy the rental units. I find that there is insufficient evidence from the Tenant to establish that the Landlord does not have a "good faith" intention to occupy the residential property. I do note, however that the Tenant's testimony that she has never missed a rent payment was not accurate. The Tenant has not paid the May 2021 rent when it was due under the tenancy agreement.

I accept the Landlord's testimony that she issued a notice to end tenancy to the upper and lower occupants of the rental property and she intends to occupy both the upper and lower unit. I accept the Landlord's testimony that the combined units are larger than her current home. I find that the Two Month Notice was issued in compliance with section 49(3) of the Act.

The Tenant's application to cancel the Two Month Notice to End Tenancy for Landlord's Use of Property dated January 29, 2021, is dismissed. The Tenancy is ending.

Under section 55 of the Act, when a Tenant's Application to cancel a notice to end tenancy is dismissed and I am satisfied that the notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the Two Month Notice complies with the requirements regarding form and content and I find that the Landlord is entitled to an order of possession effective by 1:00 pm on May 31, 2021, after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution. I authorize the Landlord to keep \$100.00 from the Tenant's security deposit.

Conclusion

The Tenant's Application to cancel the Two Month Notice to End Tenancy for Landlord's Use of Property dated January 29, 2021 is dismissed.

The Landlord's application for an order of possession for the rental unit is successful.

I grant the Landlord an order of possession effective by 1:00 pm on May 31, 2021, after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

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: May 17, 2021

Residential Tenancy Branch