



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, LRE, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order canceling a notice to end the tenancy for landlord's use of property; an order limiting or setting conditions on the landlord's right to enter the rental unit; and to recover the filing fee from the landlord for the cost of the application.

The landlord and the tenant attended the hearing, and the landlord was represented by an agent. The tenant and the landlord's agent each gave affirmed testimony and were given the opportunity to question each other and to give submissions.

No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

During the course of the hearing, the tenant withdrew the application for an order limiting or setting conditions on the landlord's right to enter the rental unit, and I dismiss that portion of the application.

Issue(s) to be Decided

Has the landlord established that the Two Month Notice to End Tenancy for Landlord's Use of Property was issued in accordance with the *Residential Tenancy Act* and in good faith?

Background and Evidence

The landlord's agent testified that this month-to-month tenancy actually began with a different tenant about 6 years ago, and this tenant moved in shortly thereafter and still resides in the rental unit. The original tenant vacated the rental unit about 3 years ago. Rent in the amount of \$550.00 per month is payable, but the landlord's agent does not

know when it is due or if there are any rental arrears. The landlord's agent does not know whether or not any security deposit or pet damage deposit was paid to the landlord. The rental unit is a manufactured home on property owned by the landlord, which also contains 2 other manufactured homes, a 5th Wheel trailer and a quanset with a suite above. A copy of a "Rental Agreement" has been provided for this hearing which is dated February 1, 2015 and signed by the landlord and the original tenant.

On May 3, 2021 the landlord served the tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property by registered mail. A copy of the Notice has been provided for this hearing by the tenant, and it is dated May 1, 2021 and contains an effective date of vacancy of July 31, 2021. The reason for issuing it states: "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)," specifying the landlord or the landlord's spouse.

The landlord is currently living at his mother's home, and just has a room, sharing the balance of the home with his mother. In early 2000 the landlord had an accident causing him to give up his towing trucks, and used that money to purchase the rental property. The landlord wants to have a permanent residence on the property, and has planted fruit trees and has plans to use this rental home for his future residence. The landlord has a 5th Wheel on the property that he stays at while in the community but the water lines have frozen and broken, and needs repairs. The landlord's agent does not reside on the property, but acts as the landlord's maintenance man for plumbing, electrical and emergency repairs.

The property has 3 mobile homes besides the 5th Wheel, as well as a suite above the quanset. This mobile home is the most private and is set up with the quanset where the landlord runs his shop and has tools and equipment, which is also where the landlord planted the fruit trees. This gives the landlord the most space and privacy from other tenants, and the yard space.

The tenant testified that the Notice was served due to the landlord's personal animosity of the tenant; the landlord does not like the tenant and has never liked the tenant. The landlord does not like the improvements made by the tenant.

The tenant has been living on the property since the beginning of the tenancy of the original tenant. The landlord told the tenant he could stay there forever, which is a binding verbal agreement.

The rental unit is easily worth double what the tenant pays for rent, and the landlord could get more rent. The tenant believes the landlord will let the home sit vacant for 6 months and then re-rent.

The tenant further testified that rent is currently \$586.00 due on the 1st day of each month, and there are no rental arrears. The landlord collected a security deposit from the tenant in the amount of \$275.00 at the beginning of the tenancy, and no pet damage deposit was collected.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*. In the case of a notice to end a tenancy for landlord's use of property, the landlord must also demonstrate good faith intent to use the rental unit for the purpose contained in the notice.

I have reviewed the Two Month Notice to End Tenancy for Landlord's Use of Property (the Notice) and I find that it is in the approved form and contains information required by the *Act*.

The landlord's agent testified that the landlord is currently living with his mother, and wants to move into this rental unit. He also testified that the landlord has planted fruit trees near this unit, the unit is more private and set up near the quanset which the landlord uses as a shop. The tenant does not believe the landlord will use it and the landlord simply doesn't like him.

In the circumstances, I am satisfied that the landlord has good faith intent to use the rental unit for the purpose contained in the Notice, and I dismiss the tenant's application to cancel it.

The *Act* also specifies that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an Order of Possession in favour of the landlord, so long as the notice given is in the approved form. Having found that the Notice is in the approved form, I hereby grant an Order of Possession in favour of the landlord.

Since the effective date of vacancy has passed, I grant the Order of Possession effective on 2 days notice to the tenant.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed.
I hereby grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenant.

This order is final and binding and may be enforced.

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: August 30, 2021

Residential Tenancy Branch