



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Sutha Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the “Act”), to cancel a Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Notice”) issued on March 29, 2021.

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. Both parties confirmed under affirmation that they were not recording this hearing in compliance with the Residential Tenancy Branch Rules of Procedures 6.11.

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 reasons 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.

Issue to be Decided

Should the Notice be cancelled?

Background and Evidence

The tenancy began in 2010. Rent in the amount of \$709.00 was payable on the first of each month. The tenant paid a security deposit of \$300.00.

The parties agreed that the Notice was served on the tenant indicating that the tenant is required to vacate the rental unit on June 30, 2021. Filed in evidence is a copy of the Notice.

The reason stated in the Notice was that:

- 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)

The landlord testified that they want the premise to live for the next two years as they are currently in the process of building a new building on the adjacent property. The landlord stated that they need the tenant's unit to reside in, so they are able to keep an eye on the project and the building materials that will be left onsite in containers. The landlord stated that the tenant's unit directly faces the adjacent property which is why they selected that unit.

The advocate for the tenant stated that they do not believe the landlord has issued the Notice in good faith. The advocate stated that the landlord has attempted to end the tenancy on two prior occasions and each time they were unsuccessful. The advocate stated that the landlord has also ended another tenant's tenancy in the building for the same reason which the landlord was granted an order of possession effective October 31, 2020. File in evidence are copies of prior notices to end the tenancy, and the two month notice issued to another tenant in the building.

The advocate for the tenant stated that there was also an empty one-bedroom at the end of May 31, 2021, which the landlord could have used, and that the landlord also owns a hotel that is 60 meters away from the property.

The advocate for the tenant stated that there has also been issues with the parking as the landlord wanted the tenant to enter into a new agreement and pay an additional amount for parking.

The tenant testified that the landlord was at their rental unit at 9:30pm on March 27, 2021 and they were yelling at them and telling them that they would have their vehicle towed with chains and threatened them that they would end their tenancy. The tenant stated that it was 2 days later they were served the Notice. File in evidence is a handwritten note from the landlord to the tenant regarding parking dated on March 27, 2021.

The landlord argued that they tried to end the tenancy due to a breach of a material term of the tenancy agreement, which is not relevant to the issuance of the Notice. The landlord stated that they did end another tenant's tenancy for landlord's use of property, which was a bachelor unit in the building as the plan was that they would stay in the unit when onsite for the project next door and travel back to the family home. The landlord stated that they are currently using the space.

The landlord argued that the project has now changed because of delays due to Covid and the general contractor they had hired is no longer available to do the project. The landlord stated as a result they will be doing the general contracting on their own and need to be onsite everyday and be able to monitor the site visually. The landlord stated that the bachelor unit does not face the project site and is no longer suitable for their needs as his wife will be now moving with him on a permanent basis and his children will be visiting as they go to school in the area. The landlord stated that the tenant's unit is bigger and meets both their business and family needs.

The landlord argued that the one-bedroom that was available on May 31, 2021 was not suitable as it is on the backside of the building and they have no visibility to the adjacent site where the project is to take place, which they need to see the site and ensure that the materials are safe from theft. The landlord stated that they will have security cameras on the project site; however, they do not record any noise, and this will give them additional security as they can hear from the tenant's unit any unusual activity.

The landlord denied that they were at the tenant's rental unit on March 27, 2021 and deny any conversation with the tenant. The landlord stated that they issue of parking had been resolved over a year ago. The landlord does not deny they left a note on the tenant's car about parking.

The landlord stated that they do not want to end the tenancy; however, they do need the rental unit that the tenant is living in for their own use. The landlord stated that they have no ulterior motive and that they have even offered the tenant an available bachelor unit, since they are a single person.

The advocate for the tenant argued that the tenant is not a single person. The advocate stated that is unreasonable that the landlord continues to refer to the tenant this way. The advocate stated that the landlord is fully aware that the tenant's partner has been living with the tenant since the tenancy commenced and this was the subject of a previous notice to end tenancy which that notice to end tenancy was cancelled. The

advocated stated that moving to a bachelor unit does not work for the tenant or her family and is not a reasonable offer.

Analysis

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

How to end a tenancy is defined in Part 4 of the Act. Section 49(1) of the Act a landlord may end a tenancy by giving notice to end the tenancy. When a tenant has filed to cancel a notice to end tenancy for landlord's use and calls into question the "good faith" requirement, the onus lies on the landlord to prove the two-part test as follows:

1. The landlord must truly intend to use the premises for the purposes stated on the notice to end tenancy; and
2. The landlord must not have an ulterior motive as the primary motive for seeking to have the tenant vacate the rental unit.

In this case, I am not satisfied that the landlord truly intends to use the premises for the stated purpose or that the landlord does not have an ulterior motive for ending the tenancy. I make these finding based on the following.

The landlord has already ended another tenant's tenancy in the building for the same reason and was granted an order of possession effective October 31, 2020. I find it troubling that just five months later the landlord is issuing this tenant the Notice for the same reasons.

The landlord has also issued the tenant two different One Month Notices to End Tenancy for Cause and the hearings were held in October 2020 and November 2020 and both notices to end tenancy were dismissed. While the landlord does not believe this is relevant; however, it clearly demonstrates that the landlord has an ulterior motive when they issued the Notice as it was issued just four months later.

The evidence of the tenant was on March 27, 2021, the landlord attended their premises at 9:30pm, yelling at them about parking and threatening them that their car would be towed with chains. The landlord denied that interaction ever occurred. The evidence of the landlord was that the parking issue had been resolved over a year earlier and that they only left a letter on the tenant's car about parking. However, I do not accept the landlord's evidence that the parking issue was resolved as the note the

landlord gave the tenant clearly is about reserving a parking spot and paying for it. Not simply that they were parked in the wrong assigned spot.

On March 29, 2021 the landlord then issued the Notice. This leads me to believe the landlord had an ulterior motive to end the tenancy.

While the evidence of the landlord was that their circumstances has changed due to the delay in the project from the current state of emergency, and because they will now be acting as the general contractor for the project. However, the state of emergency was already in place when they had ended the other tenant's tenancy on October 31, 2020 and at that time delays in construction were foreseeable at that time.

Further the evidence of the landlord was that they need this rental unit to live in, so they can have a clear view of the adjacent property and to hear any unusual activity; however, it appears from the photographs submitted in evidence by the landlord that this is not the unit that would give the best view of the adjacent property or to be able to hear unusual activity. The middle units on either floor would have a better view as they would be directly in front of the adjacent property and unobstructed from trees. This further leads me to believe there is an ulterior for ending the tenancy.

Furthermore, while the landlord claims their wife will also be moving into the rental unit, I find that highly unlikely and the landlord's wife did not attend the hearing to provide testimony.

I note there is nothing in the landlord written submission stating that they need this bigger unit to accommodate their family due to a change in circumstance. The documentary evidence provided by the landlord was simply so they could view the project site and material storage, which this can be done by surveillance camera or by hiring a security company.

Based on the above I grant the tenant's application to cancel the Notice. The tenancy will continue until such time as it is legally ended.

Conclusion

The tenant's application to cancel the Notice is granted.

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: September 1, 2021

Residential Tenancy Branch