



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL; CNL, OLC, FFT

Introduction

This hearing was convened by way of conference call concerning 2 applications made by the tenant which have been joined to be heard together. The first application seeks an order cancelling a notice to end the tenancy for landlord's use of property. The second application seeks an order cancelling a notice to end the tenancy for landlord's use of property; an order that the landlord comply with the *Residential Tenancy Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord for the cost of the application.

The tenant and the landlord attended the hearing, and the landlord was accompanied by an agent who gave affirmed testimony and submissions. The tenant was accompanied by an Advocate who was given the opportunity to question the landlord's agent and to give submissions. The parties agree that the evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Has the landlord established that the Two Month Notice to End Tenancy for Landlord's Use of Property dated June 27, 2021 was issued in accordance with the *Residential Tenancy Act* and in good faith?
- Has the landlord established that the Two Month Notice to End Tenancy for Landlord's Use of Property dated July 19, 2021 was issued in accordance with the *Act* and in good faith?
- Has the tenant established that the landlord should be ordered to comply with the *Act*, regulation or tenancy agreement?

Background and Evidence

The landlord's agent testified that this month-to-month tenancy began on January 5, 2018 and the tenant still resides in the rental unit. Rent in the amount of \$975.00 is

payable on the 1st day of each month according to the tenancy agreement, a copy of which has been provided for this hearing, however the tenant began paying \$900.00 per month since early in 2018 with the landlord's consent. On January 5, 2018 the landlord collected a security deposit from the tenant in the amount of \$487.50 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment in a 2-story complex on the bottom floor.

The landlord's agent further testified that on June 27, 2021 the landlord served the tenant with a Two Month Notice to End Tenancy for Landlord's Use of Property. However, only 1 page of the 4-page form was served, an obvious error.

On July 19, 2021 the landlord personally served the tenant with all 4 pages of a Two Month Notice to End Tenancy for Landlord's Use of Property, a copy of which has been provided for this hearing. It is dated July 19, 2021 and contains an effective date of vacancy of September 30, 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 currently resides in a 1 bedroom suite and wishes to move into the 2-bedroom rental unit. The landlord is 84 years old and is hoping that his brother, also in his 80s will move in as well, but that is yet to be determined. The rental unit has a parking spot about ¼ of the distance away. When it is icy or cold out, the landlord doesn't want to walk around the building and doesn't like the shared entrance due to COVID-19; it's quite a walk and there are different surfaces.

There have been discussions about the tenant moving into the landlord's 1 bedroom unit, but the landlord is also considering selling that unit. If the landlord's brother does not move in, it will be better for the 2nd bedroom to be available in case the landlord's daughter needs to stay there, or if the landlord needs help. The landlord also owns another apartment, which is currently rented and is on the 2nd floor, which the landlord is not interested in moving into. There is no easy access to that unit, and the landlord would have to go through the main entrance with an elevator, and with COVID-19, the landlord is not comfortable with that.

SUBMISSIONS OF THE TENANT'S ADVOCATE: The tenant is 72 years old and lives on a disability pension with a disabled son who has only ever lived with the tenant, and is part of the tenancy agreement. Since early in May, the anxiety of the tenant and his son has been incredible. Because the tenant's son is disabled, there was consideration about going into a care facility, which is also difficult because they have never been apart. The idea of moving has caused incredible distress.

There were discussions about the tenants moving to the 1 bedroom apartment, and then the landlord withdrew the offer and a heated discussion took place. The landlord is basically wanting to throw them out but for no clear reason. When the tenants believed that they didn't have to move out, they stopped looking for a place and then received another notice to end the tenancy and the verbal offer of the 1 bedroom offer was retracted. The landlord wants to raise the rent and owns several properties.

SUBMISSIONS OF THE LANDLORD'S AGENT: There is nothing in writing about the 1 bedroom unit. There was never any agreement, but it was discussed and at that point the landlord didn't know what he would do with it and is still not sure. It might be a good idea for the landlord to sell all 3 units, but he has said he would be comfortable in the 2 bedroom unit with or without his brother. The landlord's agent resides in a different community and would like to stay with the landlord when in town. The landlord lowered the rent for the tenant wanting to give him a break, and they've had a pretty decent relationship over time. The landlord is fully aware that he is required to live there and if he doesn't, he knows that's a problem.

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*, and in the case of a notice to end a tenancy for landlord's use of property, the landlord must establish good faith intent to use the rental unit for the purpose contained in the Notice.

The landlord's agent does not dispute that the first Notice given was an obvious error, in that not all pages of the form were served. The Two Month Notice to End Tenancy for Landlord's Use of Property dated June 27, 2021 is cancelled.

I have reviewed the Two Month Notice to End Tenancy for Landlord's Use of Property (the Notice) dated July 19, 2021 and I find that it is in the approved form and contains information required by the *Residential Tenancy Act*.

The landlord's agent testified that the landlord is 84 years old and wishes to move into the 2 bedroom rental unit for a number of reasons: a shorter walk from the parking space; direct access from the outside without a shared entrance or an elevator; room for his brother to move into or for his daughter to stay in when visiting or if he needs help. I accept all of those reasons. The law specifies that a landlord may end a tenancy if the

landlord intends to reside in the rental unit, and I find that the landlord has established good faith intent to use the rental unit for the purposes contained in the Notice.

Therefore, I dismiss the tenant's application to cancel the Notice dated July 19, 2021.

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 it is in the approved form, I 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.

Since the tenancy is ending, I dismiss the tenant's application for an order that the landlord comply with the *Act*, regulation or tenancy agreement.

Conclusion

For the reasons set out above, the Two Month Notice to End Tenancy for Landlord's Use of Property dated June 27, 2021 is hereby cancelled.

The tenant's application to cancel the Two Month Notice to End Tenancy for Landlord's Use of Property dated July 19, 2021 is hereby dismissed, and I grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenant.

The balance of the tenant's application is hereby dismissed without leave to reapply.

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: October 13, 2021

Residential Tenancy Branch