



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

On July 30, 2021, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* ("the Act") requesting the following relief:

- to cancel a Two Month Notice to End Tenancy for Landlord Use of Property dated July 24, 2021.

The matter was set for a conference call hearing. The Tenant and Landlord attended the hearing. The Tenant was assisted by an advocate. The hearing process was explained, and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence, orally and in written and documentary form, and make submissions to me. The parties were informed that recording the hearing is not permitted.

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.

Issue to be Decided

- Is there sufficient reason to end the tenancy based on the Two Month Notice to End Tenancy for Landlord's Use of Property?

Background and Evidence

The Landlord and Tenant testified that the tenancy began in April 2015 and is on a month-to-month basis. Rent in the amount of \$800.00 is to be paid to the Landlord by the first day of each month. The Tenant occupies a two-bedroom unit. The rental property contains a two-bedroom unit and a separate one-bedroom unit.

The Tenant testified that they received a Two Month Notice to End Tenancy for Landlord's Use of Property dated July 24, 2021 ("the Two Month Notice"). The Two Month Notice cites the following reason for ending the tenancy:

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

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 assumed to be received by filing an Application for Dispute Resolution at the Residential Tenancy Branch.

The Tenant disputed the Two Month Notice by applying for Dispute Resolution within the required time period.

The Landlord testified that he was trying to sell the rental unit and it was listed for sale since May 2020. The Landlord stated that selling the home was proving to be difficult and realtors informed him that with five cats living in the unit, and a bad smell present in the unit, prospective buyers were put off.

The Landlord testified that he cancelled the sale listing about two months ago, on or about November 15, 2021, and they moved into the one-bedroom suite located at the dispute address. The Landlord testified that when he gains occupancy of the two-bedroom unit, he will be occupying the entire home and using the rental property as a single dwelling. The Landlord stated that this will give them more room that they need to have guests and family over.

The Landlord testified that they have moved out of their one-bedroom manufactured home located in the same city and they will be selling it, as renting it out is not permitted. The Landlord stated that it is not listed for sale yet.

The Tenant's advocate asked the Landlord if he is evicting the Tenant because of the potential to sell the residential property for more profit. The Landlord replied "no".

The Tenant's advocate asked the Landlord to respond to why the for-sale sign was still in the yard as of November 11, 2021. The Landlord replied that the relator has not come to the property to retrieve the sign and that there is no contract right now.

The Tenants advocate asked the Landlord why he did not issue a One Month Notice to End Tenancy for Cause if he is concerned with cats at the rental property. The Landlord replied that he does not want to be harmful to the Tenant.

The Tenant's advocate asked the Landlord about his plans to move down south, and the Landlord replied that he intends to live at the rental unit until at least the summer and may decide to sell it down the road, and that he is undecided about this as he has safety concerns about living elsewhere.

The Tenant's advocate referred to a sworn affidavit dated November 5, 2021 from a poverty law advocate. The affidavit states that the advocate spoke to the Landlord on August 30, 2021 and the Landlord confirmed that the rental unit is listed for sale and that he is evicting the Tenant because he wanted to renovate the premises and intended to sell it.

The Tenant's advocate submitted that it is confusing that there is still a for sale sign on the property and that the Landlord is wavering about what he wants to do with respect to remaining in the rental unit. The Tenant's advocate stated that the Landlord has a dishonest motive for ending the tenancy and they must do what they say they are going to do.

The Tenant's advocate stated that the other tenant of the residential property was evicted by the Landlord by way of a two month notice and that the rental unit sat vacant for 3 months. The Tenants testified that they have only seen the Landlord on the property since November 28, 2021. The Tenant's advocate suggested that the Landlord only moved into the unit for the purposes of this hearing.

In response, the Landlord testified that he is 72 years old, and he wants his house back. He stated that he has been renovating the one-bedroom suite for two months and they moved in about two weeks ago. He stated that he intends to live in the entire home.

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.

...

If a landlord gives a notice to end tenancy to occupy the rental unit, but their intention is to re-rent the unit for higher rent without living there for a duration of at least 6 months, the landlord would not be acting in good faith.

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

Section 49(3) of the Act permits that the Landlord to end the tenancy by issuing a Two Month Notice to End Tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

I have considered whether or not the Landlord is acting in good faith. There is insufficient evidence from the Tenant of an acrimonious relationship between the parties that establishes that the Landlord is retaliating against the Tenant, or trying to avoid an obligation under the Act, tenancy agreement, or an order made by an Arbitrator.

The Landlord issued the Two Month Notice in July 2021. The Tenant submitted that the Landlord stated on August 30, 2021 that he planned to renovate and sell the rental property. The Landlord testified that he cancelled the sale listing around November 15, 2021.

The Landlord had the right to list the rental unit for sale and any sale of the property did not guarantee that the existing tenancy would end. The Landlord testified that the rental unit is now off the market and he has moved into the home and intends to occupy the entire house. The Act provides that the Landlord must intend to occupy the rental unit for at least six months and the Landlord testified that his intention is to live in the home until at least the summer. I find that there is nothing deceptive about the Landlord's intention. I find that the possibility that the Landlord may sell the home after occupying it for six months is not fraudulent or deceptive, or an ulterior motive amounting to bad faith as the Act does not restrict the Landlord from making that type of decision after he occupies the unit for at least 6 months. As mentioned above, there is insufficient

evidence to establish that the Landlord is retaliating against the Tenant, or trying to avoid an obligation under the Act, tenancy agreement, or an order made by an Arbitrator.

The Landlord's testimony that he intends to occupy the entire home is supported by the evidence that he evicted the other tenant living in the one-bedroom unit with a two month notice and he has now moved into the one-bedroom unit while awaiting occupancy of the entire home. There is nothing in the legislation preventing a Landlord who owns multiple homes from choosing which home he wants to occupy.

I find that the Landlord intends to do what he said he was going to do within the Two Month Notice.

The Tenant has failed to establish that the Landlord's intention amounts to bad faith and that he is not intending to do what he stated in the Two Month Notice. The Tenant's application to cancel the Two Month Notice is dismissed. The tenancy is ending.

Under section 55 of the Act, when a tenants 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 required form and content. The Landlord is entitled to an order of possession for the rental unit. The Landlord is granted an order of possession effective at 1:00 p.m. on December 31, 2021, after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

Conclusion

The Tenant's application to cancel the Two Month Notice to End Tenancy for Landlord's Use of Property dated July 24, 2021, is not successful and is dismissed.

The Landlord is granted an order of possession for the rental unit at 1:00 p.m. on December 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: December 08, 2021

Residential Tenancy Branch