



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes, CNL, OLC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the “Act”), to cancel Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Notice”) issued on March 31, 2022.

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.

The landlord acknowledged they received the tenant’s evidence. The tenant’s legal counsel submits they did not receive the landlord’s evidence in accordance with the Residential Tenancy Branch Rules of Procedure as it was served on July 5, 2022. Counsel submits the evidence should be excluded.

The landlord’s agent stated that the tenant has had four different lawyers, and they kept contacting those lawyers in the tempt to negotiate this matter. I note in the documentary evidence on this issue supports that the landlord was communicating with someone who said they were representing the tenant. Counsel for the tenant indicated that must have been a miscommunication.

In this case, I have reviewed the evidence and it is related to the health of the landlord’s spouse. I have excluded the evidence as it was not served in accordance with the Rules. Further, there was no dispute that the landlord’s spouse has been sick making the medical evidence unnecessary to consider.

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.

Issues to be Decided

Should the Notice be cancelled?

Background and Evidence

The tenancy began on April 1, 2018. Rent in the amount of \$930.00 was payable on the first of each month. The tenant paid a security deposit of \$465.00.

The parties agreed that the Notice was served on the tenant(s) indicating that the tenant is required to vacate the rental unit on May 31, 2022.

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 son; or the parent or son of that individual's spouse)

The landlord's agent testified that the landlord's spouse has been extremely sick and needs their rest and has other mental health issues that are impacting the family relationship.

The landlord's agent testified that the landlord wants to take back the basement of the home for the landlord's teenage son can use the area to play their video games and play their music instruments.

The landlord's agent testified that there are four rooms on the second floor; however, they are in close proximate of the landlord's spouse bedroom and when the landlord's son plays their video games or music it is disturbing the landlord's spouse and impacting their health.

The landlord's agent testified that the landlord decided that the best place for their teenage son to be able to do their activities in the lower portion of the house as this

would allow the teenage son to be a teenager and it would be unreasonable for the teenage son to be restricted from doing normal teenage things, and would allow the landlord's spouse to get the required rest they need and not be impacted by the normal noise of a teenager.

Counsel submits that the conversation on March 2, 2022, and again on March 5, 2022, when the landlord served the Notice that the tenant had asked landlord to explain the reasons for issuing the Notice. Counsel submits that the landlord's responded due to the current week economy supports the Notice was not issued in good faith.

The tenant testified that on March 2, 2022, the landlord came down to their unit and mention they wanted to take the unit back and the landlord stated that it was because of the weak economy. The tenant stated that they told the landlord that they do not see how this could help as they would not be getting additional revenue from them.

The tenant testified that on March 5, 2022, when they received the Notice. Both the landlord and the landlord's spouse was present, and they asked again the reason for ending the tenancy and the landlord stated for economy reason, and it was at that time the landlord's spouse had mentioned their health issues.

The tenant testified that there has only been a few times that they have ever heard the landlord's son play their music, and if they want to play video games they can wear a headset.

The landlord's agent argued that on March 2, 2022, the landlord did have a general conversation about the worlds weak economy as they would often has such discussion. The landlord's agent stated that the landlord denies having any conversation with the tenant on March 5, 2022, that they were evicting the tenant due to the economy.

The landlord's agent argued that the tenant works long hours and is not at the property when the landlord's son plays their music

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.

Residential Tenancy Policy Guideline (the “PG”) 2A. Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member states the following:

Reclaiming a rental unit as living space

If a landlord has rented out a rental unit in their house under a tenancy agreement, the landlord can end the tenancy to reclaim the rental unit as part of their living accommodation. For example, if a landlord owns a house, lives on the upper floor and rents out the basement under a tenancy agreement, the landlord can end the tenancy if the landlord plans to use the basement as part of their existing living accommodation. Examples of using the rental unit as part of a living accommodation may include using a basement as a second living room or using a carriage home or secondary suite on the residential property as a recreation room.

The evidence of the tenant was that the landlord was ending the tenancy for economic reasons. The evidence of the landlord’s agent was this was a general discussion about the world’s weak economy. I find it more likely than not that this was a general conversation as it was the tenant’s own evidence that stated that this did not make sense if the landlord was not going to be getting rent.

I heard no evidence that they were any prior disputes between the parties or any prior attempts to obtain a higher rent that would leave me to believe the Notice was not issued in good faith. Further, the relationship between the parties appeared to be in good standing at the time the Notice was issued.

I do not find the landlord’s position unreasonable that they want to use the basement area of the home as an extension of their home, to allow their teenage son to use for their own recreational space to play their video games and play their music. It is common when children become teenager that they need additional space to accommodate their needs.

Further, this was also for the benefit for the landlord’s spouse as they have serious health issues. This would allow the landlord’s spouse to be free from the disturbances of normal teenage noise and have the quiet time they need to recover.

I find the Notice issued has been proven by the landlord and is valid and enforceable. Therefore, I dismiss the tenant's application to cancel the Notice. I find the tenancy will end in accordance with the Act.

At the end of the hearing the landlord had agreed that if the Notice was to be upheld that they would agree to give the tenant until August 31, 2022, to vacate the rental unit. Therefore, I find the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **August 31, 2022, at 1:00 PM**. This order must be served on the tenant and may be filed in the Supreme Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Conclusion

The tenant's application to cancel the Notice, is dismissed. The landlord is granted an order of possession.

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: July 15, 2022

Residential Tenancy Branch