



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNL,

Introduction

On November 22, 2022, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) seeking to cancel a Two Month Notice to End Tenancy for Landlord Use of Property dated November 11, 2022.

The matter was set for a conference call hearing. The Landlord and the Tenant appeared at the hearing.

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. Both parties confirmed that they have exchanged the documentary evidence that I have before me.

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.

Issues to be Decided

- Does the Landlord intend, in good faith, to move into the rental unit, or allow a close family member to move into the unit?
- Is the Landlord entitled to an order of possession for the rental unit?

Background and Evidence

The Landlord and Tenant testified that the tenancy began on April 1, 2017 as a 9 month fixed term tenancy that continued thereafter on a month to month basis. Rent in the

amount of \$1,498.00 is to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit in the amount of \$720.00.

The Landlord issued the Tenant a Two Month Notice To End Tenancy For Landlord's Use Of Property dated November 11, 2022 ("the Two Month Notice"). The Landlord testified that the Two Month Notice was served to the Tenant in person on November 11, 2022. The reason for ending the tenancy cited within the Two Month Notice is:

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

The effective date (the date the Tenant must move out of the rental unit) on the Two Month Notice is January 31, 2023.

The Two Month Notice provides information for Tenants who receive the Notice. The Notice states that a Tenant has the right to dispute the Notice within 15 days after it is received by filing an Application for Dispute Resolution at the Residential Tenancy Branch.

The Tenant received the Two Month Notice on November 11, 2022, and disputed the Two Month Notice on November 22, 2022, within the required time period.

The Landlord provided testimony on why she is ending the tenancy. She testified that she will be moving into the rental unit herself. She stated that her family situation has changed and she is separating from her husband. Her husband will remain at their other residence. She stated that she has no other plans with the unit other than to move into the unit and make it more livable to her standards. She stated that she will likely update the kitchen. The Landlord testified that there is no ulterior motive for ending the tenancy.

The Landlord stated that the Tenant began emailing her with concerns about the state of repair of the rental unit after the Two Month Notice was served.

The Tenant provided testimony confirming that he started texting the Landlord after he received the Two Month Notice.

The Tenant stated that approximately two years ago the Landlord approached him asking for an agreement to raise the rent above the prescribed limits. The Tenant did

not agree to the proposed rent increase and the Landlord subsequently issued a legal Notice of Rent Increase increasing the monthly rent by the prescribed amount.

The Tenant testified that he recently has seen the Landlord with her husband at a local café. When asked whether he is suggesting that the Landlords are not separating as testified, the Tenant replied that he is not making that claim.

The Tenant was asked if the Landlord is trying to avoid an obligation under the Act by evicting him and he replied “no” but he believes the Landlord wants to sell the rental unit. He stated her true motivation is to evict him and re-rent the unit after making renovations or sell the unit within 6 months.

When the Tenant was asked what evidence he has to support that suggestion that the Landlord was going to sell the unit within 6 months, he stated that the Landlord told him the current interest rates are problematic and she may sell the unit. The Tenant was asked whether the Landlord has ever listed the rental property for sale during his tenancy and he replied “no”.

The Landlord replied that the Tenant is not correct about her motives, and that he has no idea about her life situation. She stated that in June 2022 the Tenant asked her to be a reference for him and she stated one time on text that she may sell the rental unit. She testified that she has never approached a realtor or listed the property for sale.

Analysis

Residential Tenancy Policy Guideline # 2 Ending a Tenancy: Landlord’s Use of Property 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 is a legal concept, and means that a party is acting honestly when doing what they say they are going to do or are required to do under legislation or a tenancy agreement. It also means there is no intent to defraud, act dishonestly or avoid obligations under the legislation or the tenancy agreement.”

“If a tenant claims that the landlord is not acting in good faith, the tenant may substantiate that claim with evidence. For example, if a tenant does not believe a landlord intends to have a close family member move into the rental unit, an

advertisement for the rental unit may raise a question of whether the landlord has a dishonest purpose for ending the tenancy.

If the good faith intent of the landlord is called into question, the onus is on the landlord to establish that they truly intended to do what they said on the notice to end tenancy. The landlord must also establish that they do not have another purpose or an ulterior motive for ending the tenancy.”

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

I find that the property owner correctly issued a Two Month Notice To End Tenancy For Landlord's Use Of Property. The Two Month Notice indicates the rental unit will be occupied by the Landlord or the Landlord's spouse. I find that the Two Month Notice complies with section 49(3) of the Act.

I find that the property owner has the right to end the tenancy if they intend in good faith to occupy the rental unit.

I accept the Landlord's testimony that she intends to occupy the rental property. I also accept her testimony that she intends to update building elements while she occupies the unit. She stated that she has no other immediate plans for the rental unit.

I have turned my mind to whether or not the Landlord has an ulterior motive to end the tenancy. I have considered the policy guideline that provides that “good faith” means there is no intent to defraud, act dishonestly, or avoid obligations under the legislation or the tenancy agreement.

I find that the Landlord approaching the Tenant to reach an agreement to pay more rent is not fraud, dishonesty or avoiding an obligation under the Act. The Residential Tenancy Policy Guideline # 37 Rent Increases provides that a landlord may impose a rent increase only up to the amount calculated in accordance with the regulations; or agreed to by the tenant in writing (“agreed rent increase”). I find that the rent was never increased illegally, as a proper Notice of Rent Increase was served to the Tenant.

I find that the Act permits a Landlord to end the tenancy if the Landlord occupies the rental unit within a reasonable period of time after the tenant vacates and for a period of at least 6 months. The Act does not restrict what a Landlord may do with the rental property after the six month period has expired. A landlord may choose to remain living

in the unit; sell the unit; or re-rent the unit to a new tenant. The Act does not restrict a landlord from making upgrades to a unit while it is being occupied by the landlord.

While the Tenant suggests that the true motive of the Landlord is to end his tenancy; renovate, and re-rent the unit or sell it; I find that the Act does not restrict a landlord's right to do this if the landlord occupies the rental unit for at least 6 months after the Tenant vacates. I find that a landlord choosing to re-rent or sell a unit after occupying the unit for six months is not evidence that they are acting in bad faith.

I find that the Landlord is not avoiding obligations under the Act or the tenancy agreement and I find that she intends to occupy the rental unit.

The Tenant's application to cancel the Two Month Notice to End Tenancy for Landlord's Use Of Property dated November 11, 2022 is not successful and is dismissed.. The tenancy is ending. Since the parties testified that February 2023 rent is paid in full, I grant the Landlord an order of possession for the rental unit effective February 28, 2023 after service on the Tenant.

The Act provides that if the Landlord fails to accomplish the stated purpose within the Two Month Notice, the Tenant may apply for monetary compensation.

Conclusion

The Landlord satisfied me that she intends to occupy the rental unit.

I find that the Landlord is not avoiding obligations under the Act or the tenancy agreement and is not acting in bad faith and I find that she intends to occupy the rental unit.

The Tenant's Application to cancel the Two Month Notice to End Tenancy for Landlord's Use of Property dated November 11, 2022 is dismissed.

I grant the Landlord an order of possession for the rental unit effective February 28, 2023, after service on the Tenant.

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: February 16, 2023