



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for landlord's use of property.

The hearing was originally scheduled for July 28, 2023, and I adjourned it to September 6, 2023; my Interim Decision was provided to the parties.

The tenant and the landlord attended the hearing on both scheduled dates, accompanied by Interpreters, who were affirmed to well and truly interpret the hearing from the English language to the parties' Native language, and from their respective Native languages to the English language to the best of their skill and ability. The tenant was also accompanied by the tenant's spouse. The parties each gave affirmed testimony and were given the opportunity to question each other and to give submissions.

All evidence provided by the parties 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 was issued in accordance with the *Residential Tenancy Act* and in good faith?

Background and Evidence

The landlord testified that this month-to-month tenancy began on February 1, 2022 and the tenant still resides in the rental unit. Rent in the amount of \$2,200.00 is payable on the 1st day of each month, although the tenancy agreement provided for this hearing is silent on the day rent is payable. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$1,000.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a house; the landlord does not currently reside on the property.

The landlord further testified that on March 31, 2023 the landlord physically handed to the tenant a Two Month Notice to End Tenancy for Landlord's Use of Property. A copy of the Notice has been provided for this hearing. It is dated March 31, 2023 and contains an effective date of vacancy of May 31, 2023. 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's family has grown. The landlord lives in another home with the landlord's parents and the parents of the landlord's spouse. They will occupy the rental unit, and the landlord might be moving in as well. The place the landlord lives in now is too small.

The tenant testified that initially there was a dispute with the landlord, who agreed that only 3 people would be living in the lower level of the house. Then the landlord put 7 people in there as tenants, and the tenant pays 60% of the utilities. Then the landlord started sending eviction notices, and there were no problems until that point. The landlord has served 2 eviction notices.

SUBMISSIONS OF THE LANDLORD:

The landlord will give good references to the tenants for a future landlord.

SUBMISSIONS OF THE TENANT:

The laundry doesn't work, and the landlord won't fix it and keeps saying, "Tomorrow." There are many insects and the landlord has been notified many times, but hasn't done anything about it despite seeing it.

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, which can include the reason(s) for issuing it. Also, in the case of a Two Month Notice to End Tenancy For Landlord's Use of Property (the Notice), the landlord must demonstrate good faith intent to use the rental unit for the purpose contained in the Notice.

In this case, the reason for issuing the Notice is for the landlord or the landlord's spouse to occupy it. However, the landlord testified that the parents of the landlord and landlord's spouse will occupy it, and the landlord might move in. Good faith intent means there is no ulterior motive. If the landlord isn't even sure who is going to move in, the landlord has not demonstrated good faith intent.

Therefore, I cancel the Notice and the tenancy continues until it has ended in accordance with the law.

The tenant made submissions about the landlord's failure to maintain the rental unit, but I have no such application before me. The tenants are at liberty to make an application for an order that the landlord eradicate the pest issue and maintain appliances that are included in the rent.

Conclusion

For the reasons set out above, the Two Month Notice to End Tenancy For Landlord's Use of Property dated March 31, 2023 is hereby cancelled and the tenancy continues until it has ended in accordance with the law..

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 11, 2023

Residential Tenancy Branch