



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNL, FF

Introduction

This hearing was held in response to the tenant's Application for Dispute Resolution in which the tenant has applied to cancel a 2 Month Notice to End Tenancy for Landlord's Use and return of the filing fee costs.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

Issue(s) to be Decided

Should the 2 Month Notice to End Tenancy for Landlord's Use issued on April 24, 2014 be cancelled?

Background and Evidence

The tenancy commenced in May 2012; rent is due on the 1st day of each month.

The parties agreed that a 1 month Notice to end tenancy for landlord's use of property was issued on April 24, 2014 and received by the tenant on April 25, 2014. The tenant applied to dispute the Notice within fifteen days.

The Notice indicated that the rental unit will be occupied by the landlord of the landlord's spouse or a close family member of the landlord or the landlord's spouse.

The Notice has a June 30, 2014 effective date.

The landlord said that he and his girlfriend have been planning on taking possession of the home, so they can begin to reside together. The landlord plans on moving into the home in early July. The landlord acknowledged the previous hearing held as the result of a 1 month Notice ending tenancy for cause; raised by the tenant as an indication of

bad faith. The landlord said he had been upset as he had been in the home and found damage to the walls. During the April 23, 2014 hearing the landlord's agent had said the landlord wanted to reside in the home, but the proper Notice had not been issued and the landlord had attempted to evict the tenant as the result of damage to the unit. The April 23, 2014 hearing resulted in cancellation of the 1 month Notice.

The landlord said that when he saw the holes in the walls he was worried that by the time he did move into the home it would be further damaged. The landlord then decided to take possession earlier than he may have.

The tenant described the Notice as a "loop-hole" for the landlord; allowing him to take possession when he is upset with the tenant. The tenant acknowledged he had damaged some walls and that the landlord was unhappy but believes he issued the 2 Notices out of anger. The tenant thought the evictions would be dropped as he has lived in the home for over 2 years and looked after the property well.

The tenant indicated that he does not deny the landlord will move into the home, but finds the move somewhat abusive on the part of the landlord. As soon as the April 24, 2014 hearing was concluded the landlord immediately issued the 2 month Notice to end the tenancy. The tenant is having difficulty locating a new rental unit as he has pets.

The landlord said he was not retaliating and that he has always planned on living in the home. The landlord pointed out that at the April hearing he had expressed a desire to reside in the unit and that his application for dispute resolution had indicated he wanted the damage repaired so he could move into the home. As the landlord had not issued the correct Notice ending tenancy his desire to reside in the home was not considered at the April hearing.

The parties agreed that the tenant has been given compensation as required by section 51 of the Act, as June 2014 rent has not been paid. The landlord agreed that if he were not to occupy the unit the tenant should be entitled to further compensation, in accordance with the legislation.

Analysis

There seemed to be no doubt that the tenant believes the landlord will occupy the rental unit; however, the tenant questioned the motivation of the landlord, essentially raising the issue of good faith. Residential Tenancy Branch (RTB) policy suggests that a claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to end the tenancy. I find this takes a reasonable stance.

There was acknowledgement by both parties that the landlord had been upset when he saw some damage in the home; but I find this does not mean the subsequent decision to occupy the home establishes bad faith on the part of the landlord. It is clear the landlord was upset, but I find, on the balance of probabilities, that the landlord is planning on

occupying the rental unit, with no ulterior motive for the home. There was nothing before me to indicate that the landlord had any plan for the home other than his intention to occupy the home.

Therefore, I find that the 2 month Notice to end tenancy for landlord's use of the property issued on April 24, 2014 is of force and that the tenant's application is dismissed.

Conclusion

The application is dismissed.

The 2 month Notice ending tenancy for landlord's use of the property issued on April 24, 2014 is of force.

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: June 13, 2014

Residential Tenancy Branch

