



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNL, FF

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the tenant for an order to cancel a Two-Month Notice to End Tenancy for Landlord's Use, dated May 28, 2014 and effective July 31, 2014. The stated basis of the Notice is that the unit must be vacated as it will be occupied by a child of the landlord.

Both parties were present at the hearing. At the start of the hearing I introduced myself and participants. The hearing process was explained. The parties had an opportunity to submit documentary evidence prior to this hearing and were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

Preliminary Matter

The rental unit is a manufactured home and the tenant had made this application under the Manufactured Home Park Tenancy Act. However, the landlord confirmed that the rental unit included the manufactured home and the park pad which are both owned by the landlord and both rented to the tenant.

Therefore, although the tenant's application was made under the Manufactured Home Park Tenancy Act, I find that this tenancy relationship is actually governed by the Residential Tenancy Act, because the Manufactured Home Park Tenancy Act only applies to situations in which a tenant only rents the pad site or parcel of land from the park owner and the tenant owns the structure. In situations where the residential unit itself is owned by the landlord and rented out to the tenant, then the Residential Tenancy Act will apply. Accordingly, I find it necessary to amend the tenant's application to reflect that this matter was determined under the Residential Tenancy Act.

Issue(s) to be Decided

Is the Two-Month Notice to End Tenancy for Landlord's Use supported under the circumstances or should it be cancelled as requested by the tenant?

Background and Evidence

The tenancy began in 2004 and current rent is \$600.00. No security deposit was paid. The tenant's rental unit consists of a manufactured home and the tenant is responsible for paying the hydro. The tenant testified that the landlord arbitrarily moved a boat onto the property close to the tenant's residence and told the tenant that the this hydro account must be switched into the landlord's name. The tenant testified that that this boat was hooked up to the tenant's septic field and was to share the water and hydro, despite the tenant's protests. The tenant testified that he contacted the police.

According to the tenant, he was served with a Two Month Notice to End Tenancy for Landlord's Use in reprisal for his objection to the landlord's intrusions. The tenant stated that this Notice was issued in bad faith and he has no doubt that the landlord will not be using the manufactured home to house their close family member as they claim.

The landlord denied that the Notice was issued in bad faith as a reprisal against the tenant. The landlord pointed out that they have been planning to use the rental unit to house their family for more than two years and this was verbally discussed with the tenant in the past. The landlord testified that the tenant had repeatedly assured the landlord that he was going to move. The landlord testified that they grew anxious waiting for the tenant to relocate. According to the landlord, they want time to have the rental unit prepared so that it is ready to be inhabited by the time school starts in the Fall. The landlord stated that they will likely replace the existing manufactured home as the current structure is not in good enough condition to renovate.

Analysis:

The tenant has raised the issue of bad faith and the burden of proof is on the landlord to establish that the Two-Month Notice for Landlord's Use was not issued in bad faith.

Section 49(5) provides that a landlord who is an individual may end a tenancy in respect of a rental unit if *the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.* (my emphasis).

The "good faith" requirement under the Act imposes a two part test. First, the landlord must truly intend to use the premises for the purposes stated on the notice to end the tenancy. Second, the landlord must not have a dishonest motive for seeking that the tenant vacate. If the motive for the landlord in ending the tenancy is to retaliate against the tenant or try to avoid legal responsibilities as a landlord, then the intent of the landlord is not considered to be in "good faith" and dishonesty may be inferred.

In the case before me, it is evident that the landlord and tenant have had some recent disagreements, particularly about the landlord's actions in adding a house boat to the same property, to share septic and hydro facilities.

However, I accept the landlord's testimony that the intent to convert the rental unit for landlord's use existed long before the recent disagreements arose. I accept that they genuinely had a long-term plan to eventually use the residence for their own family. Further, I do not find sufficient evidence to suggest that the landlord's daughter does not intend to actually reside in the rental unit.

Therefore, I find no valid grounds to cancel the Two Month Notice to End Tenancy for Landlord's Use and the tenant's request to cancel the Notice must be dismissed.

At the hearing, the landlord made a request for an order of possession. Under the provisions of section 55(1)(a), upon the request of a landlord, I must issue an order of possession when I have upheld a Notice to End Tenancy.

Accordingly, I find the landlord is entitled to an Order of Possession based on the May 28, 2014 Two Month Notice to End Tenancy for Landlord's Use. I hereby grant the landlord an Order of Possession effective Thursday, July 31, 2014, at 1:00 p.m. This order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that Court.

The tenant is entitled to be credited with one month compensation under section 51 of the Act that requires the landlord to pay, on or before the effective ending date of tenancy, an amount equal to one month's rent payable under the tenancy agreement.

Conclusion

The tenant is not successful in the application and the tenant's request to cancel the Two Month Notice to End Tenancy for Landlord's Use is dismissed without leave to reapply. The landlord is granted an Order of Possession based on the Notice.

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 08, 2014

