



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL MNDC

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of a 2 Month Notice to End Tenancy For Landlord's Use of Rental Property, pursuant to section 49;
- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;

The hearing was conducted by conference call. All named parties attended the hearing.

Preliminary Issue(s) – Correct legal Names of Landlord/Scope of Application

The legal names of both landlords reflected in this decision are different than the names provided in the tenant's application. In the hearing, the landlord's interpreter provided the correct legal names for both landlords named in the application.

Residential Tenancy Branch Rules of Procedure, Rule 2.3 states that, if, in the course of the dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

I am exercising my discretion to dismiss the monetary aspect of the tenant's application with leave to reapply as this is not related to the issue of whether or not the landlord had grounds to issue the 2 Month Notice to End Tenancy. Leave to reapply is not an extension of any applicable time limit.

Issues

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Background & Evidence

The rental unit is a 2 bedroom basement suite in a residential house. The tenancy began on February 1, 2015. The current monthly rent is \$710.00 and is payable on the 1st day of each month. The tenant paid a security deposit of \$350.00 which the landlord continues to retain.

The landlord served the tenant with a 2 Month Notice on October 16, 2016 on the grounds that the landlord or a close family member intends in good faith to occupy the rental unit and the landlord intends in good faith to renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

The landlord's agent testified that the landlord is pursuing an end to the tenancy as the tenant is repeatedly late paying rent and the tenant is constantly arguing & fighting with the upstairs tenants. Lastly, the landlord's agent submits that the landlord intends to renovate the entire house as they have problems with leaks in the house.

The tenant is disputing the 2 Month Notice on the grounds that it was not issued in good faith. The tenant submits that the landlord does not have a good faith intention to renovate or repair the rental unit but rather is wanting to end the tenancy for the reasons as evidenced by the landlord's own testimony. The tenant submits that he has not seen any contractors come by the rental property. The tenant submits that he has requested a list of planned renovations from the landlord but has not been provided any.

The tenant is also requesting the landlord provide an address for service of the landlord as one has never been provided by the landlord. The landlord refused to provide an address for service in the hearing. The address for service provided by the landlord on the Notice to End Tenancy is the rental unit address. The tenant submits that the landlord does not reside at this address or pick up the mail at this address.

Analysis

Section 49 of the Act contains provisions by which a landlord may end a tenancy for landlord's use of property by giving notice to end tenancy. Pursuant to section 49(8) of the Act, a tenant may dispute a 2 Month Notice by making an application for dispute resolution within fifteen days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the 2 Month Notice.

Further, 2 Month Notices have a good faith requirement. *Residential Tenancy Policy Guideline #2* "Good Faith Requirement when Ending a Tenancy" provides the following guidance:

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.

If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive for ending the tenancy.

I find that there is sufficient evidence of an ulterior motive to end the tenancy on the part of the landlord. The landlords own evidence suggests the landlord is intending to end the tenancy for reasons not related to the landlord's own use of the property but rather primarily due to repeated late payments of rent and disturbances with the upstairs tenants. On the actual grounds of the Notice, the only evidence presented by the landlord was that they intend to renovate the rental property. The landlord provided no details with respect to the nature and extent of the renovations, whether or not any permits are required by law and that the renovations require vacant possession of the rental unit. The landlord also provided no evidence on the grounds that the landlord or a close family member intends to occupy the rental unit.

As the landlords have failed to establish that they intend in good faith to use the rental unit for the stated purposes, the Notice is dismissed.

With respect to the tenant's request for the landlord to provide an address for service, if the landlord fails to provide any alternative address for service other than the address for the rental property itself, the tenant is at liberty to use this address for serving documents under the Act. Any documents served to this address in a manner permitted under the Act, may be found to be deemed served. The landlord's failure to provide an alternative address for service is at their own risk.

Conclusion

I allow the tenant's application to cancel the landlord's 2 Month Notice, dated October 16, 2016, which is hereby cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

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: December 20, 2016

Residential Tenancy Branch