



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF

Introduction

The tenant applies to cancel a two month Notice to End Tenancy dated January 31, 2017 and received by the tenant February 2 or 3, 2017. The Notice was issued pursuant to s. 49 of the *Residential Tenancy Act* (the “Act”). Section 49 permits a landlord to end a tenancy on two months notice if the landlord has a good faith intention that the rental unit be occupied by herself or a close family member.

This matter came on for hearing March 14 but was adjourned to permit trading of documents and ensure that the parties had received the other’s evidence well before the hearing.

The Notice was issued by Ms. L.T., who claims to be the owner and landlord. The tenant named Ms. L.T.’s brother in law Mr. W.T.T. as the respondent, believing him to be her proper landlord. Ms. L.T. attended the hearing, filed evidence and was represented by counsel. She has been added as a party to the application and the style of cause has been amended accordingly.

All parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Is the issuer of the Notice, Ms. L.T. the landlord and, if so, does she have a good faith intention to occupy the premises or for a close family member to occupy the premises?

Background and Evidence

The rental unit is a four bedroom house. The tenancy started in March 2014. At that time the landlord was a Mr. and Mrs. B.W. The monthly rent was and continues to be \$1600.00, due on the first of each month. The landlord holds an \$800.00 security deposit.

The property was sold in June 2015. After the sale the tenant dealt with Mr. W.T.T., who represented himself to the tenant to be the landlord.

This is the second two month Notice the tenant has received from Ms. L.T.. In December 2016 the tenant received a two month Notice to End Tenancy from Ms. L.T. based on the same ground; landlord use of property. The tenant successfully applied to have that Notice cancelled (Residential Tenancy file number shown on cover page of this decision). The Notice was cancelled because Ms. L.T. failed to prove at that hearing that she was the tenant's landlord, not Mr. W.T.T.

Following that decision, the landlord issued a fresh two month Notice; the Notice in question.

Counsel for Ms. L.T. has proved a *Land Title Act* transfer document and a Land Title Office state of title certificate showing that Ms. L.T. as purchaser, became the owner of this property on June 2, 2015.

He has provided a *Power of Attorney Act* form showing that on June 1, 2015, Mr. W.T.T. was granted Ms. L.T.'s power of attorney by her. Mr. Xu reports that the grant has recently been revoked.

Ms. L.T. filed an affidavit sworn March 1, 2017 testifying that she and her husband had been living with their daughter in an accommodation rented by the daughter. Her daughter moved out in September 2016. She avers that her daughter's tenancy ends at the end of April 2017 and that her daughter was to be married March 15, 2017 and would be permanently residing with her husband. She states she wishes to reside at the rental unit, starting May 1, 2017.

The tenant Ms. H. testifies that this is the third notice she has received. She reviews her history with Mr. W.T.T. and how he told her that he was the owner and her landlord.

She is of the view that Mr. W.T.T. is the financier of the purchase of many homes and that he arranges for people like Ms. L.T. to be owners of convenience.

Ms. H. relates the problems she has had with the home, the things she has fixed and the loss she suffered as a result of a flood last June.

There appears to be a document, purportedly from Mr. W.T.T. granting the tenant a ten year lease. This document was not referred to by the tenant during the hearing, but was rebutted by the landlord in reply. Its provenance is unknown and it has not been signed by Mr. W.T.T.

Analysis

The documentation filed by the landlord satisfies me that Ms. L.T. is the owner of the property and has been since the tenant's first landlord sold the property in June 2015. Whether or not it is an arrangement of convenience for Mr. W.T.T. (who is a registered mortgage holder on title), does not material affect the fact that Ms. L.T. is the registered owner of the property.

Mr. W.W.T. was the person acting as the tenant's landlord since June 2015. He was her only contact until the first two month Notice was issued, naming Ms. L.T. as landlord. Mr. W.W.T.'s conduct regarding the tenant and the property was consonant with his grant of power of attorney for Ms. L.T., however, I consider it possible that he misrepresented himself to the tenant as the owner of the property and thus, her landlord.

What Mr. L.T. did or did not represent to the tenant does not change the fact that Ms. L.T. is the owner and by law stepped into the shoes of the prior owner, assuming the position of landlord. Had the tenant and Mr. W.T.T. entered into a written tenancy agreement naming him as landlord, this conclusion would be different, but no such document was ever made.

I find that Ms. L.T. is the tenant's lawful landlord.

Ms. L.T. in her affidavit makes out a reasonable basis for wanting to move into the home. She and her husband will be moving out of their daughter's suite and this accommodation is an obvious choice for them. I find that she has a good faith intention to occupy the rental unit.

I have considered the tenant's evidence and have reviewed the previous dispute resolution decisions involving her first landlord, referred to by her at the hearing. I appreciate that she has dealt with a number of landlord and tenant issues during this tenancy. None of them provide a defence or reason to deny this landlord her statutory

right to end the tenancy on two months' notice in order to take up occupation of the rental unit herself.

Conclusion

The tenant's application to cancel the landlord's two month Notice to End Tenancy dated January 31, 2017, must be dismissed.

The Notice gives an effective date to end the tenancy as May 1, 2017. That is a date compliant with the notice period required by s. 49(2) of the *Act*. Section 55 of the *Act* requires that the landlord receive an order of possession in these circumstances and so the landlord will have an order of possession effective at one o'clock in the afternoon on May 1, 2017.

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: March 27, 2017

Residential Tenancy Branch