



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, CNL, FFL

Introduction

This was a cross-application hearing for Dispute Resolution under the *Residential Tenancy Act* ("*the Act*"). The matter was set for a conference call hearing.

On October 4, 2018, the Tenant applied requesting to cancel a 2 Month Notice To End Tenancy For Landlord's Use Of Property dated September 22, 2018.

On October 15, 2018, the Landlord applied for an order of possession for the rental unit based on a 2 Month Notice To End Tenancy For Landlord's Use Of Property dated September 22, 2018.

The Tenant and Landlord attended the hearing. The Tenant was assisted by an advocate. I introduced myself and the participants. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Does the Landlord have sufficient reason to end the tenancy for Landlord's Use Of Property?
- Should the 2 Month Notice be cancelled?

Background and Evidence

The parties testified that the tenancy began on July 1, 2012, and is on a month to month basis. Rent in the amount of \$525.00 is due to be paid to the Landlord by the first day of each month. The Tenant paid a security deposit of \$232.50 to the Landlord.

The Landlord issued the Tenant a 2 Month Notice dated September 22, 2018. The reason for ending the tenancy in the Notice states:

The rental unit will be occupied by the Landlord or the Landlord's spouse or a close family member of the Landlord or the Landlord's spouse.

The 2 Month Notice provides information for Tenants who receive the Notice. The Notice states that a Tenant has the right to dispute the Notice within 15 days after it is assumed to be received by filing an Application for Dispute Resolution at the Residential Tenancy Branch.

The Tenant disputed the 2 Month Notice on October 4, 2018, within the required time period.

The Landlord testified that he is 80 years old and he owns the rental unit and more than seven other rental units in the neighbourhood.

The Landlord testified that in early September 2018, he asked the Tenant to agree to pay a rent increase. He testified that the Tenant refused. The Landlord testified that he considered applying for an additional rent increase but changed his mind and decided to use the rental unit for his own personal use.

The Landlord testified that he will move a bed and furniture into the unit and use it at his convenience. He testified that he will store some of his tools in the unit and that it will be helpful for when he needs to attend to his rental units. He testified that he lives approximately 6 or 7 miles away from the unit.

The Landlord testified that he will not be re-renting the unit for some time and not in the foreseeable future.

In reply, the Tenant testified that on September 22, 2018, the Landlord told him to agree to pay an additional \$125.00 each month or else be evicted. The Tenant testified that the Landlord said if the Tenant did not pay more rent, he would use the rental unit himself.

The Tenant testified that he has no doubt that the Landlord will use the rental unit for himself for 6 months, but then will immediately rent it out for more rent.

The Tenant's advocate submitted that the Landlord issued the 2 Month Notice in bad faith. She submitted that the 2 Month Notice was issued due to the Tenant refusing to agree to an additional illegal rent increase.

The Tenant provided an audio recording of the conversation that took place between the Landlord and Tenant. The audio recording provided by the Tenant includes the following dialogue:

The Landlord stated "which one are you going to sign?" When the Tenant asked for time to read and consider the Notices, the Landlord refused and said "I am giving you the one that makes you move". The Landlord stated "I can re-rent the unit after 6 months". The Landlord stated "business is business; I can get \$850.00". The Landlord stated that the reason for the 2 Month Notice is that the rent is too low and he can use the place himself.

The Tenant testified that the Landlord issued a rent increase to him less than 1 year ago.

Analysis

Residential Tenancy Policy Guideline # 2 Ending a Tenancy: Landlord's Use of Property addresses the requirements for ending a tenancy for Landlord's use of property and the good faith requirement. The Guideline provides that the Act allows a Landlord to end a tenancy under section 49, if the Landlord intends, in good faith, to move into the rental unit, or allow a close family member to move into the unit.

The Guideline explains the concept of good faith as follows:

"Good faith is a legal concept, and means that a party is acting honestly when doing what they say they are going to do or are required to do under legislation or a tenancy agreement. It also means there is no intent to defraud, act dishonestly or avoid obligations under the legislation or the tenancy agreement."

...

"If a tenant claims that the landlord is not acting in good faith, the tenant may substantiate that claim with evidence. For example, if a tenant does not believe a landlord intends to have a close family member move into the rental unit, an advertisement for the rental unit may raise a question of whether the landlord has a dishonest purpose for ending the tenancy."

If the good faith intent of the landlord is called into question, the onus is on the landlord to establish that they truly intended to do what they said on the notice to end tenancy. The landlord must also establish that they do not have another purpose or an ulterior motive for ending the tenancy."

Based on the above, the testimony and evidence of the parties, and on a balance of probabilities, I find as follows:

I find that the Tenant has substantiated the claim that the Landlord issued the 2 Month Notice in bad faith. I find that the reason the Landlord issued the 2 Month notice is because the Tenant did not agree to pay more rent. The Tenant is not obligated to pay more rent than what the Act provides and the Landlord already raised the rent within the past year.

I find that the Landlord full intends to re-rent the unit after 6 months. The Landlord is attempting to avoid rent control obligations under the legislation. I find that the Landlord would not have issued the 2 Month Notice if the Tenant had agreed to the illegal rent increase.

The Tenant's Application to cancel the 2 Month Notice to End Tenancy For Landlord's Use Of Property dated September 22, 2018 is granted. The 2 Month Notice is cancelled.

The tenancy will continue until ended in accordance with the Act.

Conclusion

The Tenant's Application to cancel the 2 Month Notice To End Tenancy For Landlord's Use Of Property dated September 22, 2018, is successful. The 2 Month Notice is cancelled.

The tenancy will continue until 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: November 15, 2018

Residential Tenancy Branch