



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNDR, CNL

Introduction

The tenant applies to cancel a four month Notice to End Tenancy dated July 31, 2019 given on the ground that the landlord intends to perform renovations or repairs that are so extensive that the rental unit must be vacant.

By amendment the tenant also seeks to cancel a two month Notice to End Tenancy dated August 30, 2019 given on the ground that the rental unit will be occupied by the landlord or a close family member of the landlord.

Both 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

Has the landlord established the existence of valid grounds and a good faith intention under either of these Notices?

Background and Evidence

The rental unit is a two bedroom apartment on the first floor of a three level, three unit apartment building. The landlord lives on the third floor and a different tenant rents the middle floor.

This tenancy started in May 2013. The current monthly rent is \$900.00. The landlord holds a \$450.00 security deposit.

The tenant resides in the rental unit with her ten year old son, who attends a nearby school.

The landlord indicated at the start of the hearing that she considered both Notices to be in effect: that the second did not revoke the first. She has not filed any evidence in support of either Notice

In regard to the two month Notice, the second Notice, she testifies that her daughter and her daughter's boyfriend will be moving into the rental unit. They now live in a "tiny home" about 15 miles away from town. Her daughter works in town and it is a difficult commute in the winter. She says her daughter has been looking for a place to live in town but has not found suitable accommodation.

She indicates that renovations will be easier financially if she can perform them over a longer period of time and while her daughter is living there.

The landlord states that she is aware of the 12 months' rent penalty imposed by the *Residential Tenancy Act* should her daughter not occupy the rental unit for at least six months.

The tenant points to conversations with the landlord about repairs to the rental unit before she received the first Notice and says she thinks the landlord has an ulterior motive for ending the tenancy. She says the second Notice came within days after she served the landlord with her application to challenge the first Notice. She asks why the single man in the middle suite, who has been there a much shorter time than she, is not the one being evicted for the landlord's daughter.

Analysis

The ending of a tenancy is a very serious matter. The evidentiary test is on a balance of probabilities but a landlord proposing to end a tenancy will be required to present clear and convincing evidence to support the grounds for a Notice.

The Four Month Notice

The landlord has failed to indicate that all permits and approvals required for the work have been obtained. That is a prerequisite to giving a Notice of this type. The landlord has failed to describe the work intended to be done, the timetable for the work and how long she would expect the rental unit to be uninhabitable during such work. Without this evidence there is no reasonable basis to determine that the work requires that the rental unit be vacant. The fact that it might be more convenient to conduct the work with the rental unit vacant is not sufficient to justify an eviction.

Though asked, the landlord has not explained how on the one hand she can claim that she intends to conduct renovation work so extensive as to require vacant possession of the unit and on the other hand propose that her daughter will be living there during the work. It begs the question of why this tenant cannot live there during the work.

I find that the landlord has not established that she intends to perform renovations or repairs in this rental unit that are so extensive that the rental unit must be vacant.

The Two Month Notice

Section 49(3) of the *Act* is the law regarding two month Notices of this type. It 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."

It is important to note that when, as here, a close family member like the landlord's daughter is to occupy the rental unit, it is the daughter's intention that is relevant, not the landlord's intention.

The landlord's daughter has not given any evidence in this matter. There is no direct evidence of her intention. The landlord's thoughts, wishes, beliefs or second hand

evidence of her daughter's intention is not sufficiently direct or cogent to serve as grounds for the eviction of a tenant.

Conclusion

The tenant's application is allowed, both Notices are cancelled. There is no claim for recovery of any filing fee.

This decision was rendered orally at hearing and 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: October 11, 2019

Residential Tenancy Branch