



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

This hearing was convened as the result of the tenants' application for dispute resolution under the Residential Tenancy Act (the Act). The tenants applied for an order cancelling the landlord's Two Month Notice to End Tenancy for Landlord's Use of Property (the Notice).

The tenants and the landlord attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, the landlord confirmed receipt of the tenants' application and evidence. The landlord confirmed that he had not sent his evidence to the Residential Tenancy Branch (RTB). It is therefore excluded from consideration.

Thereafter the participants were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all relevant evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules) as to service and timelines; however, I consider and refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Are the tenants entitled to cancellation of the landlord's Notice?

Background and Evidence

The evidence at the hearing was that this tenancy began on February 15, 2016, monthly rent is \$1,450.00 and the tenants paid a security deposit of \$725.00.

The rental unit is the basement level of a three level home owned by the landlord. The landlord and his family occupy the upper and middle level.

The tenants submitted a copy of the Notice, which shows a date of October 4, 2019, for an effective end of tenancy date of December 4, 2019.

The Notice listed that the rental unit will be occupied by the landlord or the landlord's close family member.

The tenants filed their application for dispute resolution in dispute of the Notice on October 10, 2019.

Pursuant to the Rules, the landlord proceeded first in the hearing and testified in support of issuing the tenants a Two Month Notice.

The landlord provided no documentary evidence and instead said that his mother needs to move into a bedroom in the basement level. The landlord said that his mother is 80 years old, has leg problems, and the basement level provides easier access in and out of the home. The landlord submitted that there are 14 steps leading into and out of the middle level and her declining physical health does not permit this many steps.

The landlord confirmed that he, his wife, and three children, in their separate bedrooms, stay in the upper level and his mother and father stay in the middle level. The landlord said his 85 year-old father would continue to stay in the middle level when his mother moves to the basement level.

The landlord said there are two spare bedrooms in the home and they have many people coming and staying with them.

The landlord submitted that the tenants could continue to stay in the basement level as long as they give up a bedroom and bathroom to his mother, explaining that they have 3 bedrooms and 2 bathrooms.

In response to my inquiry, the landlord confirmed that his wife has a niece living in Australia.

Tenants' response-

In their application and in testimony, the tenants said that the landlord on September 4, 2019 asked them to give up a bedroom and bathroom from their rental unit or look for another place. According to the tenants, the landlord said his wife's niece from Australia was coming. On October 4, 2019, the landlord delivered the Notice. The tenants said that their rental unit does not lead directly to the outside as they are 7 steps below ground with no natural light and ½ of the children's windows being covered.

Tenant AT said that the landlord absolutely never mentioned his mother living in the rental unit, only that his wife's niece and other family members would be coming in the next two years, particularly the landlord's brother intended to move over from another country in the next two years.

AT said the landlord provided a doctor's letter about his mother's physical condition; however, that letter was dated from 2016, and that she has seen the landlord's mother stand and cook and move around the home with no problems.

Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

When a tenant disputes a Notice, the burden of proof reverts to the landlord to prove that the Notice is valid and should be upheld. If the landlord fails to prove the Notice is valid, the Notice will be cancelled.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met their obligation to prove their claim and the claim fails.

The landlord referred to medical documents that he said supports that his mother has limited mobility; however, those documents were not before me on this date.

I therefore prefer the tenants' evidence on this point that the doctor's letter was dated sometime in 2016.

I therefore find the landlord submitted insufficient evidence to support that his mother's medical condition required her use of the basement level.

I find the landlord's testimony that his mother will move to the basement level while his father remains in the middle level does not have the ring of truth, as I accept the tenants' undisputed evidence that they also have steps in and out of their rental unit.

I find it just as likely as not that the landlord intends on having a niece or brother move into the rental unit, with those two family members not meeting the definition of a close family member under the Act.

Due to the above reasons, I find that the landlord has provided insufficient evidence to prove the reason listed on the Notice.

As a result, I find the landlord's Two Month Notice to End Tenancy for Landlord's Use of the Property, dated October 4, 2019, for an effective move out date of December 4, 2019, is not valid and not supported by the evidence, and therefore has no force and effect.

I order that the Two Month Notice be cancelled, with the effect that the tenancy will continue until ended in accordance with the Act.

Other matters-

Additionally, during the hearing, the landlord indicated that he would possibly serve the tenants another Two Month Notice for the same reason, for an opportunity to submit evidence the next time.

Residential Tenancy Branch Policy Guideline 6 says that a tenant's right to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises, including situations in which the landlord has directly caused the interference.

I find it reasonable to conclude that a repeated issuance of invalid and unsubstantiated Notices to the tenants could be construed as such a breach of the tenants' rights of quiet enjoyment, for which the tenants could seek compensation.

Due to this, I must advise the landlord that issuing other Notices to the tenants which have no merit, such as is the case here, could result in the tenants being successful in future circumstances where they may seek compensation for a loss of quiet enjoyment and a devaluation of the tenancy.

I find it troubling that the landlord appeared very casual when suggesting that the tenants should willingly give up a third of their home so one of his family members may move in.

Conclusion

The tenants are granted an order cancelling the landlord's Two Month Notice to End Tenancy for Landlord's Use of the Property, dated October 4, 2019.

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 13, 2019

Residential Tenancy Branch