



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of a Two Month Notice to End Tenancy for Landlord's use ("Two Month Notice") pursuant to section 49.

Both parties attended the hearing and had opportunity to provide affirmed testimony, present evidence and make submissions. The landlord called her mother KL who provided affirmed testimony.

The tenant acknowledged the landlord served the Two Month Notice on January 30, 2021 pursuant to section 90 after posting to the tenant's door on January 27, 2021. Both parties confirmed receipt of each other's evidentiary package. All parties are found to have been duly served with all documents.

I find the tenant filed the Application for Dispute Resolution within 15 days as required under the *Act*.

Issue(s) to be Decided

Is the tenant entitled to the relief requested?

Background and Evidence

The parties submitted many documents and photographs as well as considerable disputed testimony in a 61-minute hearing. While I have turned my mind to all the

documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The tenant explained that the unit is the upper part of a house. The landlord purchased the property on February 1, 2019 and the tenancy continued on a month-to-month basis. The monthly rent payable on the first of the month is \$2,250.00. At the beginning of the tenancy, the tenant paid a security deposit and pet deposit in the total amount of \$2,250.00 which the landlord holds.

A term of the tenancy is that the tenant pays 60% of utilities. The balance of the utilities would be paid by the occupants of the basement unit. The landlord's 24-year old brother currently occupies the basement unit.

The tenant is seeking a cancellation of the Two Month Notice effectively served on January 30, 2021 with an effective date of March 31, 2021. The Notice states that the landlord's parents intend to occupy the unit. A copy of the Notice was submitted which is in the standard RTB form.

The tenant testified that a dispute arose between the parties in early 2021. Central to the conflict was the tenant's belief that the 60/40 division of utilities was unfair because the landlord's brother, who occupied the basement suite, took in roommates. The tenant complained to the landlord and requested an adjustment to more equitably account for the hydro use from downstairs.

The landlord replied to the tenant's concerns in emails, copies of which were submitted, stating that the tenant could move out if they did not like the arrangement.

The landlord posted the Two Month Notice to the tenant's door, on January 27, 2021. The reason given for the issuance of the Notice was that the tenant's mother or father were planning to move into the unit. The tenant testified that she first learned the landlord intended to have her parents move into the unit in an email sent the day of the posting; a copy of the email was submitted which stated in part:

I regret to inform you that my parents will be moving into the house. I have attached your eviction notice below, and as per the residential tenancy requirements the form has also been taped to your door.

The tenant testified the landlord is evicting her because of their dispute and the Notice

is not issued in good faith. The tenant testified that the landlord's brother did not require assistance as claimed by the landlord. The tenant said that January 27, 2021 was the first she heard of the plan to move the parents into the unit. The tenant testified the Notice was issued to disguise the landlord's true plans, to renovate and rent the unit as soon as possible at a higher rate.

The landlord replied that her brother in the apartment downstairs had serious medical issues. To adequately care for him, his parents intended to move into the unit.

The landlord's testimony was supported by the witness KL, the landlord's mother, who also submitted a written statement. KL testified that she currently lives in a rental about a 15-minute drive from the unit. KL stated that she drives to see her son once or twice a day. She stated that his medical condition worsened recently, and the family is concerned about his well-being. KL acknowledged she has not given notice to end her current tenancy and stated that she intends to move into the unit as soon as possible.

The tenant requested the Two Month Notice be cancelled. The landlord requested an Order of Possession.

Analysis

Section 49 of the Act allows a landlord to end a tenancy on a date that is not earlier than two months after the date the tenant receives the notice or if the tenancy is for a fixed term not earlier than the date specified as the end of the tenancy in the agreement, if they, in good faith, plan to move into the rental unit.

The tenant sought a cancellation of the landlord's Two Month Notice. The landlord explained that her 24-year old brother occupies the basement suite, has special medical needs, and the parents, supported by the witness testimony of the mother KL, intended to occupy the unit in order to engage more directly in his care.

The tenant questioned the good faith of the Notice. The tenant stated that the parties had a conflict which included the fair division of the costs of utilities and this was the reason for the eviction. The tenant claimed that the Notice was issued because of the conflict and not because the landlord's parents intended to move in to care for her brother.

Residential Tenancy Branch Policy Guideline number #2 examines the issue of ending a tenancy for landlord's use of property. It notes that good faith is an abstract and

intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage. 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.

This Guideline reads in part as follows:

If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End 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.

Since the good faith intent of the landlord is called into question in this case, 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 the issuance of the Notice during the conflict indicates the landlord may have another purpose in ending the tenancy. I find the tenant's assertion credible that the landlord wanted to get rid of a troublesome tenant and that this is the real reason for the Notice. I have reached this conclusion after hearing the testimony and finding that the tenant's version of events is the more believable and supported by documentary evidence. Where the parties' evidence conflicts, I prefer the tenant's testimony as the more plausible.

I therefore find that the landlord has not met the burden of proof on a balance of probabilities that their intention in issuing the Notice is to have the landlord's parents live in the unit. I find they have another reason, that is the eviction of a problematic tenant with whom they have a dispute.

As a result of my findings, I grant the tenant's application to cancel the Two Month Notice.

As I have cancelled the Notice, I direct that the tenancy continues until ended in accordance with the agreement and the Act.

Conclusion

The Two Month Notice is cancelled, and the tenancy continues until ended in accordance with the agreement and 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: May 23, 2021

Residential Tenancy Branch