

Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: CNL

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for an order to set aside a Notice to End Tenancy dated October 29, 2008 to be effective December 31, 2008 pursuant to s. 49 of the Act. I accept the landlord was properly served with the Application for Dispute Resolution. In the hearing the landlord verbally asked for an order of possession pursuant to this matter, effective December 31, 2008.

Issue(s) to be Decided

Is the intended occupant for the rental unit a close family member of the landlord?
Does the landlord truly intend to do what the landlord indicates on the notice to end tenancy?
Is the landlord entitled to an order of possession?

Background and Evidence

The landlord has given notice to end the tenancy and the tenant has made application to set the notice aside. The landlord issued the notice on his stated primary basis that the subject rental unit will be occupied by, (NTE) “the landlord, or the landlord’s spouse or a close family member (father, mother or child) of the landlord or the landlord’s spouse”. Specifically, the landlord provided sworn testimony that the intended “close family member” to occupy the rental unit will be the landlord’s stated stepson, son of the landlord’s former spouse, “son of my ex-wife, AB, aged X”. The intended occupancy by

Mr. AB is destined to be February 1, 2009, subsequent to some renovations of the rental unit specified as a new kitchen countertop, flooring, lighting, bathroom fixtures and painting. The landlord indicated the work to be forwarded in the notice to end tenancy. The landlord verbally provided some quotes for the intended work in the rental unit amounting to at least several thousand dollars. The landlord supplied testimony that the work is unlikely to require a permit as it is essentially cosmetic in nature and not structural.

The tenant's application information and testimony in the hearing called into question the landlord's "good faith" intent. The tenant testified that, to his thinking, the landlord is acting with an ulterior motive for ending the tenancy, which he stated is to eventually raise the rent higher than permitted if the tenant were to remain in the unit with the permitted progressive rent increases. The tenant supplied additional testimony that if the work is not in need of a permit and primarily cosmetic that the landlord does not necessarily require the rental unit to be vacated and is prepared to endure the work being done around him.

Analysis

I find that the landlord's "good faith" intent is valid in so much as the landlord intends to do what the landlord indicates on the notice to end the tenancy. However, I find that the landlord's testimony that the "close family member" of the landlord for whom the occupancy of the rental unit is, in "good faith" intended, does not fall inside the definition of "close family member" under s. 49(1) of the Residential Tenancy Act. I find that the son of a former spouse, or, "ex-wife", is not whom is defined under s. 49(1)(a) or (b) as to an individual's father, mother, spouse or child, or the father, mother, or child of that landlord's spouse. I further find that the work outlined to be done to the rental unit by the landlord amounts to updating the rental unit and, although the work will pose inconvenience to any occupant, do not entail repairs requiring the rental unit to be vacated.

Conclusion

The landlord is not entitled to an order of possession and the landlord's notice to end tenancy for landlord's use of property is hereby cancelled.

Dated: December 3, 2008