



Dispute Resolution Services

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

Decision

Dispute Codes:

CNL FF

Introduction

I have been delegated the authority under Section 9.1 of the *Residential Tenancy Act* (the “Act”) to hear this matter and decide the issues.

I reviewed the evidence on the case file prior to the Hearing.

This is the Tenant’s application to cancel a 2 Month Notice to End Tenancy for Landlord’s Use of Rental Property and to recover the filing fee of this application from the Landlord.

Issue(s) to be Decided

- (1) Has the Landlord given sufficient evidence to prove, on the balance of probabilities, that he intends to use the Tenant’s rental unit for a family member?
- (2) Is the Tenant entitled to recover the cost of the filing fee for this application from the Landlord?

Background and Evidence

Tenant’s evidence

The Tenant testified that he mailed the Landlord a copy of the Application for Dispute Resolution and hearing package on January 8, 2009 by registered mail and provided a Canada Post tracking number.

The Tenant testified that he believes the Landlord is trying to end the tenancy in order to collect more rent from a future tenant, and that he does not believe the Landlord intends, in good faith, to use the rental unit for a family member. The Tenant testified that he is a long term tenant, having lived in the apartment for 16 years. The Tenant testified that he lives with his partner, and his partner's children live with them on weekends.

The Tenant stated that the current Landlord purchased the rental property in 2007. The Tenant stated that in May of 2007, he received a notice from the Landlord to increase his rent from \$575 to \$800.00 per month. The Tenant testified that he offered to pay \$700.00 per month, but the Landlord refused. The Tenant discovered that the rent increase the Landlord was requesting was in excess of the percentage allowed under the Act, and advised the Landlord of this fact. The Tenant started paying rent in the amount of \$600.00 per month, starting May 1, 2007.

The Tenant testified that he received another notice to increase rent on May 1, 2008, and is now paying \$625.00 per month for rent. The Tenant testified that he lives in Unit 7, which is a 2 bedroom apartment in the basement of the building. The Tenant stated that another 2 bedroom rental unit, Unit 8, is the same size as his unit and is on the same floor of the building. The Tenant testified that Unit 8 currently rents for \$800.00 per month. The Tenant stated that he realizes he is paying below market rent and is prepared to pay up to \$690.00 per month if he is allowed to stay.

Landlord's evidence

The Landlord testified that his daughter is moving to Vancouver in March, 2009, and that he needs the rental unit to be vacant for his daughter's use.

The Landlord testified that there are 8 rental units in the building, 4 of which are two bedroom units. The Landlord testified that it is a two bedroom unit that his daughter

requires. With respect to the four 2 bedroom units, the Landlord testified the tenants are currently paying rent as follows:

Unit Number	Current Rent
3	\$830.00
6	\$830.00
7 (subject rental unit)	\$625.00
8	\$800.00

The Landlord testified that Units 3 and 6 are occupied by families with children and long term tenancies. The tenants in Unit 3 have been there since November, 1990. The tenants in Unit 6 have been there since August of 1993.

With respect to Unit 8, the Landlord testified that it is 10 feet below entrance level and does not have any windows. The Landlord testified that Unit 8 has been the subject of flooding and water damage and has had its floor replaced twice.

The Landlord testified that Unit 7 has a window in the kitchen and is level with the street entrance to the building.

The Landlord stated that he did not want to move his daughter into an apartment that has no windows, and is subject to flooding incidents. The Landlord testified that he doesn't want to displace the families in Units 3 and 6. The Landlord testified that this is why he chose Unit 7 instead of the other three 2 bedroom units in the building.

Analysis

I am satisfied that the Landlord was served with the Tenant's application and hearing package.

In an application such as this, where the Landlord has issued a Notice to End Tenancy for Landlord's Use of Property, and the Tenant has questioned the "good faith" intent of the Landlord, the burden is on the Landlord to establish that he truly intends to do what the Landlord indicates on the Notice to End Tenancy. The Landlord must establish that he does not have an ulterior motive for ending the tenancy as his primary motive.

The Landlord did not provide any documentary evidence of this daughter moving to Vancouver in March, 2009. Examples of such corroborative evidence might be: a copy of his daughter's plane ticket; a copy of a letter from his daughter's new employer indicating her start date; a copy of his daughter's written notice to end her tenancy with her current landlord.

The Tenant has raised a concern that the Landlord may have another motive for ending the tenancy. The Tenant is currently paying rent at \$625.00 per month. This is considerably below the monthly rent paid by the tenants in units 3 and 6, who have lived in the building for as long as the Tenant. In May of 2007, the Landlord attempted to increase the Tenant's rent outside the allowable percentage under the Act, from \$575 per month to \$800.00 per month. Upon receiving the notice of rent increase, the Tenant advised the Landlord that the maximum allowed rental increase allowed was 4%. As a result, the Landlord increased the Tenant's rent to \$600.00 a month instead of \$800.00. (I note that a 4% increase on \$575.00 is \$23.00, for a maximum monthly rent of \$598.00 per month). In May of 2008, the Tenant's rent was increased a further \$25.00 per month for a total rent of \$625.00. (I note that the maximum rent increase allowed in 2008 was 3.7%, for a total maximum allowable rent increase of \$22.13 per month, based on \$598.00 per month, or \$620.13 per month.)

The Landlord denied that he is attempting to evict the Tenant in order to get more money for the rental unit from a new tenant. The Landlord testified that he chose Unit 7 for his daughter because, unlike Unit 8, it has a window and is not subject to flooding. Units 3 and 6 are on upper floors of the building, which are generally accepted to be more desirable locations. The Landlord stated that he does not wish to displace the

families in Units 3 and 6, however, the Tenant lives with his partner and has his partner's children living with them on the weekends.

Based on the oral testimony of the Landlord and the Tenant and my analysis of the evidence provided by both parties, I find that the Landlord has not met his burden of proof that he intends to use the Tenant's rental unit for his daughter's use.

Furthermore, on the balance of probabilities, I find that the Landlord has not established that he does not have an ulterior motive for tending the tenancy as his primary motive. I therefore grant the Tenant's application to cancel the 2 month Notice to End Tenancy for Landlord's Use.

The Tenant has been successful in his application and is entitled to recover the \$50.00 filing fee for this application from the Landlord.

Conclusion

The 2 Month Notice to End Tenancy for Landlord's Use of Property, effective February 28, 2009, is cancelled and this tenancy will remain in full force and effect.

Pursuant to Section 72(2)(b) of the Act, I order that Tenant is entitled to apply the \$50.00 towards his March, 2009 rent. The rent due to the Landlord from the Tenant for the month of March, 2009, is therefore \$575.00.

February 9, 2009
