



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

OPL

FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on the landlord's two notices to end the tenancy for landlord's use both dated January 5, 2009 and effective March 31, 2009. Both parties appeared and each gave affirmed testimony in turn.

Issue(s) to be Decided

The issue to be determined based on the testimony and the evidence is whether the tenancy can be ended for landlord's use and an Order of Possession issued based on the Two Month Notice to End Tenancy. The following determinations must be made:

- Was the two-month notice for Landlord Use issued and served in compliance with the Act ?
- As the "good faith" intention was called into question by the tenant, has the landlord proven that the landlord intends in good faith to occupy the unit?

Background and Evidence

The landlord had submitted into evidence a copy of the Two-Month Notice to End Tenancy indicating that the landlord needed to end the tenancy so that the landlord or a close family member could move in. The landlord, testified that the upper suite of the building where he resides is also used by his mother who is the owner, his brother and other family members on occasion. The landlord testified that it was the intention for him to move into the lower suite so that he has his own private unit.

The tenant raised the issue of bad faith and pointed out that the landlord had made several unsuccessful attempts to get an order ending the tenancy and the tenant strongly suspected that this latest Notice was merely contrived for the purpose of getting rid of this tenant. The tenant hopes that the landlord's application will be dismissed so that the tenancy can continue.

Analysis

Under section 49(3) of the Act under, *"Landlord's notice: landlord's use of property"*, the Residential Tenancy Act states that 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. In this section the definition of **"close family member"** means, in relation to an individual,

- (a) the individual's father, mother, spouse or child, or
- (b) the father, mother or child of that individual's spouse;

The tenant has questioned the good faith intention of the landlord. However, if the landlord's Notice is upheld and enforced, the Act provides some protection in the form of a payment to the tenant that will be imposed on the landlord should the landlord fail to follow through by moving in after gaining possession. Section 51(2) of the Act states that if: (a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period

after the effective date of the notice, or; (b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice, then the landlord under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

The parties entered into a mediated discussion on this matter, the outcome of which was the following:

- The parties agreed that the tenancy will end pursuant to the Two-Month Notice for Landlord's Use dated January 5, 2009, but that the effective date will be set for July 1, 2009 and that an Order of Possession will be issued in favour of the landlord for that date.
- The parties agreed that the tenant will not pursue entitlement under section 51(1) of the Act to receive compensation equivalent to one-month free rent and the tenant agreed to pay rent in full for each month until the end of the tenancy June 30, 2009.
- The parties both agree that the tenant is still entitled under section 51(2) of the Act to make an application for dispute resolution should the landlord not move in to the unit as promised within a month of the end of the tenancy and continue to reside in the unit for at least six months. Under the Act, the tenant would be entitled to obtain a monetary order equivalent to two month's rent.

Conclusion

On consent of the parties and reflecting the mutual agreement reached during these proceedings, I hereby issue an Order of Possession in favour of the landlord effective at 1:00 p.m. Wednesday July 1, 2009. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

Mar 2009

Date of Decision

Dispute Resolution Officer