

DECISION AND REASONS

Dispute Codes

CNL & PSF

Introduction

This hearing dealt with an application by the tenant seeking to have a two month Notice to End Tenancy served for the landlords' use of the rental unit set aside. The tenant also seeks an Order that the landlords provide an essential service. Both parties appeared for the hearing and were provided the opportunity to be heard and respond to the evidence of the other party.

Issues to be Determined

Have the landlords' failed to provide an essential service? Should the two month Notice to End Tenancy for landlord's use of the rental unit be set aside?

Background and Evidence

The tenant received a two month Notice to End Tenancy on February 1, 2009 on the basis that the landlords would be using the rental unit for a close family member pursuant to section 49 of the *Act*. The tenant understands that the landlords want their mother to occupy the rental unit because she has difficulty with her legs and would be better suited to occupy the lower unit which has no stairs.

The tenant questions the true intentions of the landlords for the following reasons:

- He understands that the landlords have another rental unit with sufficient space in another location;
- That there were previous discussions about a rent increase;
- The tenant believes that the landlords mortgage is very high and they cannot afford to not rent the unit; and
- He questions the validity of the landlords' mother's medical condition requiring no steps when he has personally observed her mobility.

The tenant is also seeking an Order that the landlords provide sufficient heat in the rental unit. He stated that on January 25, 2009 he complained about the lack of heat. The tenant explained that there was a period of time when he was ventilating the rental unit after a flood and it became very cold in the rental unit. However, the tenant claims that since he has closed the windows the rental unit is still going down to only about 18 degrees during the night. He seeks an Order that the landlords maintain the heat at 22 degrees.

The landlords argued that the tenant's claims are all speculative and questioned where he was gathering his information. The landlords submitted that there are currently six individuals residing in upstairs and the stairs are very difficult for his mother. As a result they wish to have her reside in the lower unit which has no stairs. The landlords denied that they had any other motive for serving the tenant with the two month Notice to End Tenancy.

The landlords also argued that the tenant never informed them of any problems with the heat until recently. The landlords stated that they have had no opportunity to investigate if there is a problem. However, the landlords provided evidence that the other unit on the lower level has remained at a comfortable level and that the bylaws only require a temperature of 18 degrees.

Analysis

Section 49 of the *Act* allows a tenancy to end with two month's notice if the landlord intends, in good faith, to occupy the rental unit. The tenant has questioned the good faith or the true intentions of the landlords based on the landlords failure to deal with the complaints respecting the heating and his speculations regarding the finances of the landlords and the medical capacity of the landlords' mother.

I find; however, that the tenant's arguments are without merit. I am not satisfied that the landlords have failed to adequately respond to the tenant's concerns about the heating because the tenant has only recently made complaints, contributed to the problem when he left the windows open and has not given the landlord's adequate or reasonable time to look into the problem. I find there is no evidence that the landlords have issued the two month Notice to End Tenancy in retaliation to the tenant's complaints about the heat. I also find that the tenant's other points about the landlords' financial position or the medical capacity of the landlords' mother is purely speculative and not based on any evidence.

I find that the landlords' truly intend to use the rental unit for the stated purpose and that the two month Notice to End Tenancy is valid. I deny the tenant's request to set aside the notice and grant the landlords' request for an Order of Possession for the effective date of the two month notice.

I have amended the two month Notice to End Tenancy to the correct effective date and I grant the landlords an Order of Possession effective **April 30, 2009 at 1:00 p.m.**

I dismiss the tenant's request for an Order requiring the landlords to provide an essential service. I have found that the tenant's application is premature as a problem with the heating has not been established and the tenant has not provided the landlords with a reasonable time to make repairs if required. If the problem persists the tenant may file a new application.

Conclusion

I dismiss the tenant's application having found that the two month Notice to End Tenancy is valid.

Dated March 18, 2009.

Dispute Resolution Officer