

Dispute Resolution Services

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

Decision

Dispute Codes: CNL, LRE, FF

Introduction

This hearing dealt with applications by tenants to set aside notices to end this tenancy and to suspend or set conditions on the landlord's right to enter the rental units. The tenant P.H. resides on the lower floor of the rental unit and the tenant J.O. resides on the upper floor of the rental unit. Both tenants and the landlord participated in the conference call hearing and had opportunity to be heard.

Two individuals were named as respondent landlords. The landlords are brothers and the rental unit in question is part of the estate of their late mother. J.G. has acted in the capacity of a landlord, collecting rent from the tenants. Although he was named as a respondent, J.G. appeared on behalf of the tenants seeking to set aside the notices to end tenancy which were served by the respondent E.G..

Issue(s) to be Decided

Does the landlord have grounds to end these tenancies?

Background and Evidence

The parties agreed that on February 19, 2009 the tenants were served with notices to end their tenancies. The notices were issued pursuant to section 49(5) of the Act which provides as follows.

49(5) A landlord may end a tenancy in respect of a rental unit if

- 49(5)(a) the landlord enters into an agreement in good faith to sell the rental unit,
- 49(5)(b) all the conditions on which the sale depends have been satisfied, and
- 49(5)(c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:

- 49(5)(c)(i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;
- 49(5)(c)(ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

The landlord testified that on February 13, 2009 he sold the rental unit in an arms-length transaction to J.S.. The landlord's realtor appeared as a witness in the hearing and confirmed the details of the sale. The landlord submitted a copy of a letter in which J.S. advised that he or his family would be occupying the rental unit and requesting the landlord to give notices to end tenancy to the tenants. The landlord's realtor submitted a copy of the contract of purchase and sale which shows J.S. as the purchaser.

The tenants and the respondent J.G. allege that the landlord purchased the rental unit himself or in some other way contrived to make it appear that the rental unit had been sold to a third party when in fact it had not. The tenants and J.G. expressed concern that some months prior to the sale the landlord E.G. had transferred title of the rental unit to himself in his capacity as executor of his mother's estate. J.G. testified that the transfer was illegal and that he should have been named as a co-executor. The tenants testified that when they received a copy of the purchaser J.S.'s request for the landlord to end their tenancies, they contacted J.S. who said he did not purchase the property. The tenants suggested that the fact that the transfer had taken place prior to the sale coupled with J.S.'s denial of having purchased the property has led them to believe that the landlord has not acted in good faith.

Analysis

In order to establish grounds to end the tenancy under section 49(5) the landlord must pass three hurdles. (1) The landlord must have in good faith entered into an agreement to sell the property; (2) all conditions must have been satisfied, i.e. subjects removed; and (3) the purchaser must have requested in writing that the landlord end the tenancy because the purchaser or a close family member intends to occupy the unit. The tenants and J.G. have a suspicion that the landlord has acted in bad faith and created documents such as the contract of purchase and sale and the letter from J.S..

However, the tenants have no proof of their allegations. Specifically, while they claim to have spoken to J.S., they did not produce him as a witness or provide a statement from him in which he states that he did not purchase the property. The testimony of the landlord and realtor and the contract of purchase and sale have persuaded me that the real estate transaction was a bona fide transaction. In the absence of a rebuttal by J.S., I accept as authentic the copy of the letter authored by him and submitted by the landlord. Although the contract of purchase and sale indicates that J.S. is a licensed realtor, I do not consider this to be proof that the transaction was in any way fraudulent. I also cannot find a reason why the landlord would have ended the tenancies even if he had been the purchaser of the rental unit. There is no indication that there has been any dispute between the tenants and the landlord and while there is a history of conflict between the two brothers, I cannot see that E.G. ending the tenancies would accomplish any of the nefarious purposes alleged by J.G.. For these reasons I decline to set aside the notices to end tenancy and I dismiss the tenants' applications. As a result, the tenancies will end pursuant to the notices.

I note that in the event that J.S. or his close family member do not move into the rental unit, the tenants are free to file an application for dispute resolution pursuant to section 51(2) of the Act which provides that failure to accomplish the purpose stated in the notice to end tenancy will obligate the landlord or purchaser to pay the tenants an amount equivalent to double the rent.

As the tenants' applications have been dismissed it is unnecessary to address their request to suspend or set conditions on the landlord's right to enter the rental units and those claims are dismissed also.

Conclusion

The tenants' applications are dismissed. The tenants will bear the cost of the filing fees.

Dated April 22, 2009.