

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.

This matter was originally heard on April 6, 2009, and adjourned to May 25, 2009, for the Tenants to serve the Landlords with their amended application.

I reviewed the evidence on the case file prior to the Hearing. The parties gave affirmed evidence and this matter proceeded on its merits.

Issue(s) to be Decided

This is the Tenant’s application to cancel the 2 month Notice to End Tenancy for Landlord’s Use and to recover the cost of the filing fee from the Landlord.

Background and Evidence

Tenants’ testimony

- The Landlords served the Tenants with a Two Month Notice to End Tenancy for Landlord’s use, because “The rental unit will be occupied by the landlord’s spouse or a close family member (father, mother, or child) of the landlord or the landlord’s spouse.”

- The Tenants do not believe the Landlords or their close family members will be occupying the rental unit.

Landlord's testimony

- The Landlord agreed that the Tenants had paid rent for May, 2009, and that the Tenants had not been advised that the money was accepted “for use and occupancy only”.
- The Landlord testified that he intended to use the rental unit as an office and residence for the partners of his company, on a time-share basis.
- The Landlord testified that he had all the permits required to do renovations to the unit that would require the rental unit to be vacant.

Analysis

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 issued the Notice to End Tenancy in accordance with section 49(3) of the Act, which states:

Landlord's notice: landlord's use of property

49

(3) A 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.

The Landlord, by his own evidence, does not intend for a family member to occupy the rental unit. The Landlord intends to make major renovations to the rental unit and then to have his business partners share the space as an office/residence. The Landlord did not issue the Notice to End Tenancy pursuant to Sections 49(4), (6)(b) and (6)(f). I am enclosing a copy of Section 49 for the parties' information and reference.

In addition to the above, the Landlord accepted rent for the month of May, 2009, and in so doing has re-instated the tenancy. The Landlord did not issue a receipt for "use and occupancy only".

Therefore, for the reasons outlined above, the 2 Month Notice to End Tenancy is cancelled and the tenancy remains in full force and effect.

The Tenants have been successful in their application and are entitled to recover the cost of the filing fee from the Landlord.

Conclusion

The Two Month Notice to End Tenancy for Landlord's Use is cancelled. The tenancy remains in full force and effect.

Pursuant to Section 72(2)(a) of the Act, the Tenants may deduct the cost of the filing fee in the amount of \$50.00 from a future rent payment.

May 27, 2009
