



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

CNL, CNC

Introduction

This hearing was scheduled in response to the Tenants' Application for Dispute Resolution, in which the Tenants made application to set aside a Notice to End Tenancy for Cause and a Notice to End Tenancy for Landlord's Use of Property.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

Issue(s) to be Decided

The issues to be decided are whether the Notice to End Tenancy for Cause and the Notice to End Tenancy for Landlord's Use of Property that were served on the Tenants should be set aside.

Background and Evidence

The Landlord and the Tenants agree that this tenancy began on January 16, 2009.

The Landlord and the Tenants agree that the Landlord served the Tenants with a Notice to End Tenancy for a Landlord's Use of Property, which required the Tenants to vacate the rental unit on June 30, 2009. The reason for ending the tenancy that was stated on the Notice, was that all of the conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give the Tenants a Notice to End Tenancy because the purchaser or a close family member intends to occupy the rental unit.

The Tenants stated that Notice to End Tenancy for a Landlord's Use of Property was served on them on April 30, 2009. They stated that the Notice to End Tenancy was served on them prior to all of the conditions for sale of the rental unit being satisfied.

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The Landlord did not submit a copy of the sales contract for this rental unit, although she did acknowledge that all of the conditions for the sale of the rental unit had not been completed by the time the Tenants had been served with the Notice to End Tenancy for a Landlord's Use of Property.

The Landlord and the Tenants agree that the Landlord served the Tenants with a Notice to End Tenancy for Cause, which required the Tenants to vacate the rental unit on June 30, 2009. The reason for ending the tenancy that was stated on the Notice, was that the Tenant knowingly gave false information to prospective tenant or purchaser of the rental unit/site.

The Agent for the Landlord, who is the listing real estate agent, stated that the female Tenant advised prospective purchasers that the taps were leaking. The Agent stated that she is not aware that the taps are leaking. The female Tenant acknowledged that she told a prospective purchaser that there was a problem with a downstairs tap. She stated that the tap is still broken and that the water supply to that tap has been shut off.

The Agent for the Landlord, stated that the female Tenant advised prospective purchasers that the washing machine was leaking and that there was mould in the rental unit. The Agent stated that she is not aware that the washing machine is leaking or that there is mould in the rental unit. The female Tenant acknowledged that she told a building inspector that the washing machine in the upper portion of the rental unit is leaking and that there was mould in the vicinity of the washing machine because of the leak. She stated that the washing machine in the upper portion of the rental unit is leaking and that she believes there is mould in the vicinity of the washing machine because of the leak.

The Agent for the Landlord, stated that the female Tenant advised her that the hot tub was not working. The Tenants stated that the hot tub is working and they deny telling anyone recently that it was not working. They stated that they have previously advised the landlord of a problem with the hot tub, but that situation has been repaired and that the hot tub is currently functioning properly.

Analysis

Section 49(5) stipulates, in part, that a landlord may end a tenancy in respect of a rental unit if the landlord enters into an agreement in good faith to sell the rental unit; all the conditions on which the sale depends have been satisfied; the purchaser asks the landlord, in writing, to give notice to end the tenancy because 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.

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As the Landlord acknowledged at the hearing that all the conditions for the sale of the rental unit had not been satisfied at the time the Notice to End Tenancy for a Landlord's Use of Property was served on the Tenants, I find that the Notice to End Tenancy was served on the Tenants prematurely. On this basis, I set aside the Notice to End Tenancy for a Landlord's Use of Property that was served on April 30, 2009. The Landlord retains the right to serve another Notice to End Tenancy for a Landlord's Use of Property once the conditions established by section 49(5) have been met.

I find that the Landlord submitted insufficient evidence to establish that the Tenants provided prospective buyers with false information regarding the condition of the taps in the rental unit. In reaching this conclusion, I was strongly influenced by the absence of evidence that refutes the Tenant's evidence that there was a problem with the tap, and the absence of evidence that corroborates the Agent for the Landlord's statement that all of the taps are functioning properly. In circumstances where a Landlord is alleging that a Tenant gave false evidence about the condition of a rental unit, the Landlord bears the burden of proving that the statements made by the Tenant were false. It is not sufficient to simply state that the statements made by the Tenant were not true.

I find that the Landlord submitted insufficient evidence to establish that the Tenants provided prospective purchasers with false information regarding the condition of washing machine and mould in the area of the washing machine. In reaching this conclusion, I was strongly influenced by the absence of evidence that refutes the Tenant's evidence that there was a problem with the washing machine, and the absence of evidence that corroborates the Agent for the Landlord's statement that the washing machine is working and that there is no mould in the rental unit. In circumstances where a Landlord is alleging that a Tenant gave false evidence about the condition of a rental unit, the Landlord bears the burden of proving that the statements made by the Tenant were false. It is not sufficient to simply state that the statements made by the Tenant were not true. In particular, it is not sufficient to say that there is no mould in the rental unit simply because the Agent for the Landlord could not observe the mould.

I find that the Landlord submitted insufficient evidence to establish that the Tenants provided anyone with false information regarding the condition of the hot tub. In reaching this conclusion, I was strongly influenced by the absence of evidence that corroborates the Agent for the Landlord's statement that the Tenants told her the hot tub was broken. In circumstances where a Landlord is alleging that a Tenant gave false evidence about the condition of a rental unit, the Landlord bears the burden of proving that the statements were made by the Tenants. In circumstances where the Tenants deny making the statement, the onus is on the Landlord to prove that the statement was made.

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Section 47(j) of Act stipulates that a landlord may end a tenancy if a tenant knowingly gives false information about the property to a prospective tenant or purchaser viewing the rental unit. As the Landlord has failed to establish that the Tenants gave false information about the property to a prospective tenant or purchaser, I hereby set aside the Notice to End Tenancy for Cause that required to Tenants to vacate the rental unit on June 30, 2009.

Conclusion

As I have determined that the Landlord has submitted insufficient evidence to establish that they have grounds to end this tenancy pursuant to section 47(1)(j) or 49(5) of the Act, I hereby set aside the Notice to End Tenancy for Landlord Use of Property that required the Tenants to vacate the rental unit on June 30, 2009 and the Notice to End Tenancy for Cause that required the Tenants to vacate the rental unit on June 30, 2009. I hereby order that this tenancy continue until it is ended in accordance with the *Act*.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 15, 2009.

Dispute Resolution Officer