

## **DECISION**

Dispute Codes      CNL FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to cancel a 2 Month Notice to End Tenancy for Landlord's Use and to recover the cost of the filing fee from the Landlord for this application.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the *Act*, served personally to the Resident Manager at his office on November 9, 2009.

The Landlord, Resident Manager, Tenant, and the Tenant's Advocate appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form.

All of the testimony and documentary evidence was carefully considered.

### Issues(s) to be Decided

Is the Tenant entitled to an Order under sections 49 and 72 of the *Residential Tenancy Act*?

### Background and Evidence

The undisputed facts are the month to month tenancy began on August 1, 1992 with the current rent payable on the first of each month in the amount of \$600.00.

The Landlord's Witness/Common-Law Spouse testified that she has been the Landlord's common-law spouse for the past 4 ½ years, that she moved in with the

Landlord as soon as she met him, and now the Landlord wants her to work for him leasing out rental units for the complex of three buildings where the Tenant resides.

The Witness/Common-Law Spouse stated that she was unemployed for about six months before meeting the Landlord and prior to the period of unemployed she was self employed renting vehicles to people working in the film industry.

The Witness/ Common-Law Spouse advised that she would be residing in the subject rental unit on days when she would have to work late so that she would not have to travel home alone after dark. The Witness/ Common-Law Spouse argued that her job would involve her leasing out the rental units and that this work would require her to work late and stay overnight about four or five nights a week.

The Witness/ Common-Law Spouse confirmed that she is still residing with the Landlord in a common-law relationship and that the Landlord tells her where to live.

The Landlord testified that the 2 Month Notice to End Tenancy for Landlord's use was served personally to the Tenant by the resident manager so that his common-law spouse can reside in the subject rental unit on a casual part-time basis.

The Resident Manger confirmed that he served the Tenant with the 2 Month Notice to End Tenancy, in person at the rental unit, on October 31, 2009.

The Landlord stated that his common-law spouse is better at renting out apartments than his current resident manager and that he needs to have these units rented out as soon as possible.

The Landlord argued that there are three buildings and building "A" has 78 units, building "B" has 72 units, and building "C" has 78 units however only 36 units are ready for occupancy in building "C" due to a recent fire. Of the 36 units available in building "C" 6 are occupied and 30 are vacant.

The Landlord argued that his common-law spouse has stated that she does not want to live on the main floor and the Tenant's rental unit is on the third floor. The Landlord testified that the Tenant was a previous employee of his, that he could not remember when the Tenant worked for him but that it was for ten to twelve years, and that employee's rental units are upgraded to a higher standard than regular units which makes the Tenant's rental unit more desirable for his common-law spouse.

The Landlord confirmed that he has owned the building since 1988 and that he believes the Tenant finished her employment with him about one year to fourteen months ago. When asked why the Landlord did not evict the Tenant at the end of her employment the Landlord replied that the Tenant has occupied the same rental unit prior to her employment as she did during her employment.

The Landlord confirmed that he had previously applied for an additional rent increase and a hearing was scheduled to take place sometime near the end of October 2009 however the Landlord withdrew his application in September 2009 as he wished to attempt to gain mutual agreement with the tenants for the additional rent increase.

I asked the Landlord what happened in October to cause him to initiate the Notice to End Tenancy against this Tenant. The Landlord argued that it was in October 2009, he could not remember the exact date, that the Landlord was given an Occupancy permit for building "C" so the Landlord wanted to get the units rented as soon as possible and wants his common-law spouse to rent out these units. The Landlord stated that he was first granted a provisional occupancy permit, and then a temporary occupancy permit, and then the final occupancy permit however he did not know the exact dates of these permits.

The Resident Manager testified that he was instructed to send out letters to all of the Tenants occupying 1 bedroom suites to attempt to gain written agreement from those tenants for an additional rent increase and that these letters were not sent until a few weeks ago, near the beginning of December 2009.

The Landlord confirmed that both the Resident Manager and the Tenant live in building "A" and that the Resident Manager conducts the leasing or rental business in a separate office located in building "A".

The Tenant's advocate (Advocate) testified and clarified that the Landlord had attempted a 67% rent increase earlier in 2009 and that the Landlord withdrew his application prior to the hearing date.

The Advocate argued that the Tenant was employed with the Landlord for only three or four years between 2004/2005 up until 2008 and not for ten or twelve years as indicated in the Landlord's testimony.

The Tenant testified and confirmed that she resided in the same rental unit prior to her employment and that there were no upgrades or renovations performed to her rental unit during the term of her employment.

The Advocate contends that the 2 Month Notice to End Tenancy was issued in bad faith for retaliation against the Tenant for the Tenant's involvement in dispute against the Landlord's additional rent increase.

The Advocate argued that the Landlord's Witness's testimony did not hold up as the dates and time frames the Witness testified about her employment and length of her relationship with the Landlord did not add up. The Advocate testified that to date the Landlord and his Witness/ Common-Law Spouse have yet to do an inspection in the Tenant's rental unit so they cannot speak to the actual condition of the Tenant's rental unit and how desirable or undesirable the unit is.

The Advocate testified that there are many vacant suites available for the Landlord's Witness/ Common-Law Spouse to occupy part time or on an as needed basis which

supports her argument that evicting a Tenant who has resided in the same rental unit for over seventeen years for this purpose constitutes bad faith.

The Landlord confirmed that his Witness/Common-Law partner has not commenced work leasing out these rental units and the Resident Manager is currently performing these duties.

### Analysis

When a Tenant has filed to cancel a notice to end tenancy for landlord's use and calls into question the "good faith" requirement, the onus lies on the Landlord to prove the two part test as follows:

- 1) The landlord must truly intend to use the premises for the purposes stated on the notice to end tenancy; and
- 2) The Landlord must not have an ulterior motive as the primary motive for seeking to have the tenant vacate the rental unit.

In this case the Landlord testified that he needs to evict a Tenant who has resided in the rental unit for over seventeen years so that the Landlord's Common-Law Spouse can occupy the rental unit on a casual / part-time basis while working for the Landlord to lease out over thirty six vacant rental units.

The Landlord contradicted his own testimony when he argued that he needs his Common-Law Spouse to work for him to lease out the vacant units as quickly as possible yet the Resident Manager is still the only person performing these duties. It would be reasonable to conclude that if the Common-Law Spouse was needed to perform these duties "as soon as possible" that she would have begun to do the work months ago when the Landlord was granted the occupancy permits. If a residence was truly needed for the Common-Law Spouse, she could have resided temporarily in one of

the existing vacant units. I note that the leasing or rental business is conducted in a separate office located in building "A".

The testimony and evidence before me supports that Landlord and Tenant had a previous falling out when the Tenant was opposed to a 67% rent increase, an increase that is more than the legislated allowable amount. The Landlord withdrew his application for an additional rent increase less than one month before issuing the Tenant with the notice to end tenancy.

I note that there is no evidence before me to support the Landlord's testimony that the notice to end tenancy was issued when the Landlord received the occupancy permit for building "C".

Given the circumstances which occurred this year with relation to the Landlord's attempt at a rental increase, and the fact the Witness/Common-Law Spouse has yet to begin leasing the vacant units, I find that the issuance of the 2 Notice to End Tenancy to be considered a retaliatory action on the part of the Landlord.

Based on the aforementioned I find that the Landlord has failed to prove the "good faith" requirement for issuing the notice to end tenancy and I hereby cancel the notice.

I note that the Landlord accepted the Tenant's payment of November 30, 2009 for December 2009 rent and by doing so the Landlord has waived the notice to end tenancy and has reinstated the Tenant's tenancy, in accordance with the *Residential Tenancy Policy Guideline #11*.

I caution the Landlord that under section 95(2) of the Act, any person who coerces, threatens, intimidates or harasses a tenant from making an application under the Act, or for seeking or obtaining a remedy under the Act, may be found to have committed an offence and is subject to a fine or administrative penalty.

As the Tenant has been successful with her application, I hereby award her recovery of the \$50.00 filing fee from the Landlord.

Conclusion

The 2 Month Notice to End Tenancy issued on October 30, 2009 is hereby cancelled and of no force or effect.

The Tenant is hereby Ordered to reduce her January 1, 2010 rent by \$50.00 in full satisfaction of her claim.

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: December 15, 2009.

---

Dispute Resolution Officer