

DECISION

Dispute Codes O, FF

Introduction

This matter dealt with applications by the Tenants for an Order that they do not have to comply with Notices to Transfer issued by the Landlord requiring them to move to different (smaller) suites in the rental property. The Tenants also applied to recover the filing fees they paid for this proceeding.

At the beginning of the hearing the Tenants claimed that one of them received the Landlord's evidence package yesterday. Counsel for the Tenants claimed that he received a copy of the Landlord's evidence package just prior to the hearing. The Tenants agreed to proceed with the hearing on condition that they had the right to request an adjournment if something arose out of the Landlord's evidence at the hearing that they needed an opportunity to respond to. The Tenants did not request an adjournment during the course of the hearing.

At the beginning of the hearing the Landlord objected to the Tenants' applications being joined as she argued that the evidence for each was sufficiently different to warrant separate hearings. However, the Landlord admitted that each of the Tenants resided in the rental property and that each was issued a Notice requiring them to move to another suite in the rental property due to a term of their respective tenancy agreements to that effect. In the circumstances, I find that the two applications are sufficiently similar to warrant hearing them jointly and the Landlord's application to sever them is dismissed.

Issues(s) to be Decided

1. Is the Landlord entitled to require the Tenants to vacate their present rental units and move to other suites in the rental property?

Background and Evidence

The Landlord is a non-profit housing society. The Tenants' rents are subsidized and the Tenants' portion of the rent is based on their incomes. The Landlord said that all Tenants of the rental property have signed tenancy agreements that contain a clause that they agree to abide by the Landlord's conditions, rules and regulations. Those conditions, rules and regulations are appended to the tenancy agreement and the condition relied on by the Landlord in this matter states as follows:

- "2. One bedroom suites occupied by a married couple or two persons:
 - a) In the event of the death of either party, the surviving party agrees to vacate the suite/apartment within a reasonable length of time, not to exceed

three months, OR agree to accept the first Bachelor suite which becomes vacant.”

The Landlord said that both Tenants currently occupy one bedroom suites. The Landlord claimed that the spouse of the Tenant, I.D., also occupied her suite until his death in late 2009. The Landlord admitted that the Tenant, L.W., was the only occupant of her suite but argued that she was given the suite as a condition of her employment as the building manager but that her employment ended on October 30, 2009. The Landlord gave both Tenants “Notices of Transfer” in January 2010 that they were deemed to be “over-housed” and would be required to move into bachelor suites in the rental property.

The Tenant, I.D., argued that when she moved into the rental property, she resided in another suite and signed a tenancy agreement only for that suite. The Tenant, I.D., said that once she married her spouse, she moved into his rental unit (where she currently resides) but did not sign a new tenancy agreement. This Tenant did not dispute that her spouse (now deceased) had signed a tenancy agreement with the Landlord. The Landlord confirmed that I.D.’s spouse had signed a tenancy agreement agreeing to abide by the same conditions, rules and regulations. Consequently, the Tenant admitted that she (and her late spouse) had agreed as a condition of their tenancy to abide by the condition that they vacate their one bedroom suite upon the death of one of them.

The Tenant, I.D. also argued that the Landlord was applying its policy unfairly in that there were other single residents in the rental property occupying one bedroom suites. The Landlord claimed, however, that I.D.’s rental unit was the only one bedroom suite on the first floor of the rental property and that it was required for another resident (and his spouse) who was in a wheel chair and on oxygen and who could not therefore use the stairs in an emergency. The Tenant, I.D. also argued that she had leg and breathing problems and that as a result, she should not be transferred to another floor.

Analysis

Although the Tenant, L.W., resides alone in a one bedroom unit in the rental property, I find that the Landlord’s Notice to Transfer is ineffective to end her tenancy. In particular, I find that this Tenant was given the rental unit as a condition of her former employment and not because she was occupying it with another person. As the conditions necessary for the Landlord to request a transfer under its rules have not been met, I find that the Landlord’s Notice of Transfer is of no effect. In order to end this tenancy, the Landlord instead would have to issue a One Month Notice to End Tenancy for End of Employment and show that the suite is needed for another employee.

However, I find that the Notice of Transfer given to the Tenant, I.D., is valid and enforceable. Even if I.D.’s original tenancy agreement expired when she moved into her spouse’s rental unit, I find that it was a term of the I.D.’s late husband’s tenancy

agreement with the Landlord that on his death, his successor or surviving spouse would vacate the rental unit within a reasonable period of time. Consequently, I find that the Landlord is entitled to rely on this condition of the tenancy agreement and to apply for an Order of Possession if the Tenant fails to comply with it (or breaches it).

Although I.D. argued that the Landlord was unfairly and selectively enforcing its policy, I find that there is no evidence of bad faith in her case. In particular, I find that the Landlord has selected the rental unit of this Tenant because it is the only one bedroom suite on the 1st floor. I also find that the Landlord has determined that this rental unit is required for other occupants of the rental property one of whom has greater physical limitations and who therefore has a greater need for a suite on the 1st floor. While the Tenant did provide a brief doctor's note which stated that she "should not move floors" due to her leg and breathing problems, there was no further evidence to suggest that the Landlord had failed to consider and weigh her needs when issuing its Notice to Transfer.

Conclusion

The application of the Tenant, L.W., is granted and I find that she is entitled to recover the \$50.00 filing fee she paid for her application. I order pursuant to s. 72 of the Act that she may deduct this amount from her next rent payment when it is due and payable.

The application of the Tenant, I.D., is dismissed without leave to reapply. 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: March 23, 2010.

Dispute Resolution Officer