



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNL

Introduction

This hearing dealt with the tenant's application to cancel a Notice to End Tenancy for Landlord's Use of Property. Both parties appeared at the hearing and were provided the opportunity to be heard and to respond to the submissions of the other party.

In filing this Application for Dispute Resolution the tenant applied to dispute a Notice to End Tenancy issued May 31, 2010 because the Notice did not provide a reason for ending the tenancy. Subsequent to serving the landlord with the hearing documents, on June 28, 2010 the landlord issued another Notice to End Tenancy and provided a reason for ending the tenancy on the second page of the Notice. The tenant provided the June 28, 2010 Notice as evidence for this hearing, indicated she wished to dispute it at this hearing and served the evidence upon the landlord. Both parties were prepared to deal with the Notice to End Tenancy issued June 28, 2010 and I proceeded to deal with that Notice during the hearing.

Issues(s) to be Decided

Has the landlord established that the landlord, or a close family member of the landlord, intends in good faith to occupy the rental unit?

Background and Evidence

The parties provided undisputed testimony as follows. The male landlord identified in this application manages the rental property but the property is owned by the female

landlord. The female landlord is the daughter of the male landlord and is herein referred to as the daughter. The tenancy commenced November 9, 1991 and is currently on a month-to-month basis. The tenant is currently paying rent of \$572.54 due on the 1st day of every month. In January 2010 the parties participated in a dispute resolution proceeding under file no. 746940 where the tenant was successful in having a Notice of Rent Increase set aside. The subject of this dispute is the *2 Month Notice to End Tenancy for Landlord's Use of Property* (the Notice) issued June 28, 2010 and requiring the tenant to vacate the rental unit August 31, 2010. The reason indicated on the Notice is that the rental unit will be occupied by the landlord, the landlord's spouse, or close family member of the landlord or landlord's spouse.

The landlord testified that the parents of his daughter's spouse (herein referred to as the in-laws) will be occupying the rental unit. The landlord explained his daughter's in-laws moved from Victoria to Richmond approximately three months ago to assist with child care for his daughter. The landlord acknowledged that his daughter has a suite in her house but that it is occupied by the daughter's nanny.

The tenant questioned the landlord's good faith intention to end the tenancy. The tenant was of the position the Notice was given in retaliation for the previous dispute proceeding and because the landlord and tenant have a strained relationship. The tenant also explained that the rental unit is a small and basic below ground unit, has barred windows and is in a poor area of Surrey subject to much crime. The tenant submitted that it was unlikely the in-laws would want to move to such a unit in Surrey when they help with child care in Richmond. The tenant also pointed out that the landlord and his family own many properties and that the upper level of the residential property is also tenanted and is larger with more amenities.

The landlord responded to the tenant's assertions by claiming he does not carry animosity towards the tenant and any conflict is nothing beyond normal conflict between a landlord and tenant. Further, the landlord contends that he could have applied for an

Additional Rent Increase if he wanted to make another attempt at collecting higher rent. The landlord was of the position the area in which the rental unit is located is going to improve in the next few years and the landlord cannot find a reason why the in-laws should not live in the rental unit. The landlord explained the upper unit would not be as suitable for the elderly in-laws as it would require yard maintenance and is a larger space than they require.

As evidence for the hearing I was provided with copies of the two Notices to End Tenancy for Landlord's Use of Property issued to the tenant.

Analysis

Under the Act, a landlord may end a tenancy for landlord's use pursuant to section 49 of the Act. Section 49(3) provides "a landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or close family member of the landlord intends in good faith to occupy the rental unit". (my emphasis added)

Section 49 of the Act defines "landlord" for the purpose of section 49 of the Act as an individual who holds at least ½ of full reversionary interest in the property. Section 49 of the Act also defines "close family member" as the individual's father, mother, spouse or child, or the father, mother or child of that individual's spouse.

In this case, for purposes of issuing a section 49 Notice the "landlord" is the daughter who owns the property. The parents of the daughter's spouse meet the definition of a close family member of the landlord.

At issue for me to determine is whether the landlord has met the good faith requirement imposed by section 49(3). Residential Tenancy Policy Guideline 2 provides for the good faith requirement and I have referred to that guideline in making my decision.

Policy Guideline 2 provides, in part:

The "good faith" requirement imposes a two part test. First, the landlord must truly intend to use the premises for the purposes stated on the notice to end the tenancy. Second, the landlord must not have a dishonest or ulterior motive as the primary motive for seeking to have the tenant vacate the residential premises.

For example, the landlord may intend to occupy or convert the premises as stated on the notice to end. That intention may, however, be motivated by dishonest or undisclosed purposes. If the primary motive for the landlord ending the tenancy is to retaliate against the tenant, then the landlord does not have a "good faith" intent. Similarly, if the landlord is attempting to avoid his/her legal responsibilities as a landlord, or is attempting to obtain an unconscionable or undue advantage by ending the tenancy, the intent of the landlord may not be a "good faith" intent. Rather, the circumstances may be such that dishonesty may be inferred.

If the "good faith" intent of the landlord is called into question, the burden is on the landlord to establish that he/she truly intends to do what the landlord indicates on the Notice to End, and that he/she is not acting dishonestly or with an ulterior motive for ending the tenancy as the landlord's primary motive.

The tenant in this case called into question the landlord's good faith intention and I find the landlord has the burden to demonstrate that he/she truly intends to do what the landlord indicates on the Notice and that the landlord is not acting dishonestly or with an ulterior motive for ending the tenancy.

Establishing the burden of proof is essential in this case because I was provided with mostly disputed verbal testimony with respect to the landlord's intent to use the

property. Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their position.

In this case, I found there was a lack of documentation or testimony from the daughter or the daughter's in-laws to support the landlord's assertions that the in-laws recently moved from Victoria and that the in-laws intended to occupy the rental unit. I also found, based on the balance of probabilities, that it is unlikely the in-laws moved to the lower mainland to care for the daughter's children but intend to live in a small basement unit in a poor area of Surrey when the daughter's children are located in Richmond.

Further, upon considering the landlord was unsuccessful in collecting a higher rent increase from the tenant and it is reasonably likely the rent paid for this unit is low, I find the landlord may be primarily motivated to end the tenancy due to the amount of rent being collected for this unit and because of previous disputes with the tenant.

In light of the above, I find the landlord failed to satisfy me that the daughter's in-laws intend in good faith to move in to the rental unit. Therefore, I set aside the Notice to End Tenancy issued June 28, 2010 with the effect that this tenancy continues.

Conclusion

The Notice to End Tenancy has been cancelled and the tenancy continues.

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: July 16, 2010.

Dispute Resolution Officer