



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

CNL

Introduction

The hearing was scheduled in response to the Tenants' Application for Dispute Resolution, in which the Tenants applied to set aside a Two Month Notice to End Tenancy.

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

Issue(s) to be Decided

The issue to be decided is whether the Notice to End Tenancy that was served by the Landlord should be set aside.

Background and Evidence

The Landlord and the Tenants agree that this tenancy began on July 31, 2009.

The Landlord and the Tenants agree that the Tenants were personally served with a Two Month Notice to End Tenancy for Landlord's Use of Property on June 30, 2010, which required the Tenants to vacate the rental unit by August 31, 2010. The reason for ending the tenancy that was stated on the Notice, was that the rental unit will be occupied by the landlord or the landlord's spouse, or a close family member of the landlord or the landlord's spouse.

The Landlord and the Tenants agree that there is a self-contained residence with two bedrooms in the lower portion of this residential complex. The Landlord and the Tenants agree that there is a self-contained residence with three bedrooms in the upper portion of the residential complex and one bedroom in the lower portion of this residential complex. The parties agree that the Tenants live in the single bedroom in the lower portion of the complex that is a part of the larger self-contained residence.

The Landlord stated that the Notice to End Tenancy was served on the Tenants because the Landlord intends to move out of his current home and that he intends to move into the larger self-contained residence in the residential complex, along with his wife, his two sons, and his sister.

The Tenants submitted a copy of a list of rental accommodations that is distributed by the Salvation Army, for the period between July 07, 2010 and July 13, 2010, which advertises a single room for rent that is "available immediately". The Tenants contend that this advertising indicates that the Landlord does not intend to move into the rental unit.

The Landlord stated that he and his employees have been using the two-bedroom self-contained rental unit for non-residential purposes for approximately eight months. He stated that he did advertise a single bedroom in the two-bedroom self-contained rental unit in July and that a male tenant moved into one of the bedrooms in that unit on August 01, 2010 as a result of his advertisements.

The Tenants contend that the other two tenants who are living in the upper four-bedroom self-contained rental unit have not been served with notices to end their tenancy, which causes them to believe that the Landlord does not intend to move into the rental unit.

The Tenants contend that they have both been advised by the female and the male tenant who currently live in the upper four-bedroom self-contained rental unit that they are not moving. They provided no documentary evidence to corroborate this statement and they declined the opportunity to call these individuals as witnesses.

The Landlord stated that the second bedroom in the two-bedroom self-contained rental unit will be occupied by the female tenant who is currently living in the upper four-bedroom self-contained rental unit. He stated that this female tenant moved into the upper rental unit on July 01, 2010 with the understanding that she would move into the lower unit once some renovations had been completed.

The Landlord stated that the male tenant who is currently living in the four-bedroom self-contained rental unit has given notice of his intent to end the tenancy and he will be vacating the rental unit at the end of August of 2010.

The Tenants contend that the two-bedroom self-contained rental unit is incomplete and that the occupant of that unit still uses the washroom and kitchen facilities in the upper unit. The Landlord stated that the two-bedroom self-contained rental unit is self-contained and that there is no need for the tenants in the lower unit to use the washroom and kitchen facilities in the upper unit. The Tenants submitted no evidence to corroborate their statement.

The Tenants contend that approximately six months ago the Landlord served the tenants who had been living in the two-bedroom self-contained rental unit with a Two Month Notice to End Tenancy for Landlord's Use of Property and that the Landlord did not move into the rental unit. They contend this indicates that the Two Month Notice to End Tenancy for Landlord's Use of Property that was served to them was not served in good faith.

The Landlord stated that he did serve the tenants who had been living in the two-bedroom self-contained rental unit with a Two Month Notice to End Tenancy for Landlord's Use of Property sometime last year. He stated that he and his farm employees have been using the kitchen and washroom facilities in that rental unit for approximately eight months.

The advocate for the Tenants contends that it seems illogical that the Landlord would use these facilities for farming purposes during the winter months and then rent it out during the growing season. The Landlord stated that his blueberry crop has now been harvested and that there is pruning and other labour related to farming that is required year-round.

The male Tenant stated that he had a dispute with the Landlord regarding a motor home that the tenant was disassembling and that the Notice to End tenancy was served two days after this dispute. He contends that the Notice to End Tenancy was served as a result of the dispute.

Analysis

Section 49(4) of the *Act* stipulates, in part, that a landlord may end a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. In the circumstances before me, I find that the Tenant has submitted insufficient evidence to refute the Landlord's claim that he intends to move into the rental unit with members of his family.

In reaching this conclusion I was influenced by the absence of evidence that corroborates the Tenants' claim that the occupants currently living in the four-bedroom self-contained rental unit will not be vacating the rental unit and by the absence of evidence that refutes the Landlord's statement that those occupants will be vacating the four-bedroom self-contained rental unit. In the absence of corroborating evidence, I cannot conclude that the Landlord will be prevented from moving into the rental unit because it remains occupied.

In reaching this conclusion I was influenced by the absence of evidence that corroborates the Tenants' claim that the two-bedroom self-contained rental unit is incomplete and that the current occupant of that rental unit uses the washroom and

kitchen facilities in the upper unit and by the absence of evidence that refutes the Landlord's statement that the two-bedroom unit is complete. In the absence of corroborating evidence, I cannot conclude that the Landlord will be prevented from moving into the rental unit because the occupants of the lower unit need access to the washroom and kitchen facilities in the upper unit.

In reaching this conclusion I placed no weight on the fact that in July of 2010 the Landlord advertised shared accommodation in this residential complex. I accept the Landlord's testimony that the advertisement related to a room in the two-bedroom self-contained rental unit and that it had no relation to the four-bedroom self-contained rental unit in which the Tenants reside. I therefore find that it has no bearing on the Notice to End Tenancy that was served on the Tenants.

I cannot conclude that this Notice to End Tenancy was not served in good faith on the basis of the Two Month Notice to End Tenancy that was served on the previous tenants of the two-bedroom self-contained rental unit, as there is insufficient evidence to show that the Landlord did not use that unit for his own personal use for at least six months after he regained possession of the unit. I note that using the unit for business purposes is a legitimate use of the rental unit and that the Tenant was not obligated to reside in the rental unit unless he specifically stated that was his reason for ending the tenancy. I can find no reason to conclude that the Landlord and his employees did not use this rental unit for business purposes. I further note that neither party knew precisely when the Landlord regained possession of the rental unit.

Without some evidence to support the Tenant's suspicion that the Landlord was ending the tenancy because of a dispute the parties had about a motor home that was being disassembled on the property, I cannot conclude that this Notice to End Tenancy was not served in good faith. In reaching this conclusion I can find no thread that connects the two events and I find that it is nothing more than mere speculation.

In determining this matter I found the testimony of both parties to be equally credible and I could find no reason to favour the evidence of one party over the other.

Conclusion

I hereby dismiss the Tenant's application to set aside the Notice to End Tenancy and I uphold the Notice to End Tenancy that was served on the Tenants.

The Landlord and the Tenants are hereby reminded of the provisions of section 51(1) of the *Act*, which stipulates that a tenant who receives notice to end a tenancy pursuant to section 49 of the *Act* is entitled to receive from the landlord before the effective date of the notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

The Landlord and the Tenants are also advised of the provisions of section 51(2) of the *Act*, which stipulates that the landlord must pay the tenant the equivalent of two month's rent payable under the tenancy agreement if steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 of the *Act* within a reasonable period after the effective date of the notice or if the rental unit is not used for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice.

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: August 16, 2010.

Dispute Resolution Officer