

## **DECISION**

### **Dispute Codes:**

CNL

### **Introduction**

This Dispute Resolution hearing was convened to deal with an Application by the tenant for an order to cancel a Two-Month Notice to End Tenancy for Landlord's Use dated July 30, 2010 and effective October 1, 2010 because the unit will be occupied by the landlord or a close family member (father, mother, or child) of the landlord or the landlord's spouse. Both the landlord and the tenant's representative appeared and each gave affirmed testimony in turn.

### **Preliminary Matter**

The Respondent advised that the landlord named on the application, D.C. is representing the estate of the current landlord, V.C., who is deceased.

In defining "landlord" the Act states that in relation to a rental unit, landlord includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
  - (i) permits occupation of the rental unit under a tenancy agreement, or
  - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);

Given the above, I find that the landlord and respondent would be the Estate of VC and the application is hereby amended to include the actual landlord.

**Issue(s) to be Decided**

The tenant was seeking to cancel the Notice for Landlord's Use and the issue to be determined based on the testimony and the evidence is whether the Two-Month Notice to End Tenancy for Landlord's Use supported under the circumstances to terminate the tenancy because a close family member intends to reside in the unit.

As the issue of bad faith has been alleged by the tenant the following questions must be answered:

1. Whether there an ulterior motive on the part of the landlord for issuing the notice to end the tenancy or
2. Whether the landlord has met the burden of proof to establish that the landlord intends in good faith to occupy the unit

The burden of proof is on the landlord to establish that the Two-Month Notice to End Tenancy for Landlord's Use was issued in good faith.

**Background and Evidence**

The tenancy began in August 2007 and the current rent was \$1,200.00.

The landlord submitted documentary evidence to verify that the proposed occupant is the son of the late owner and was also formerly the ward of the person acting as agent for the estate and functioning in the capacity of landlord. The landlord testified that the intention was that the son of the late owner would be taking residence in the two units now contained in the building and on July 30, 2010 the tenant was personally served with a Two-Month Notice to End Tenancy for Landlord's Use effective October 1, 2010.

The tenant testified that the person named as occupant was not the son or close family member of the person who was acting as landlord in the rental agreement and the tenant was never made aware that the owner was actually the Estate of VC.

### **Analysis**

Section 49(5) provides that a landlord who is an individual may end a tenancy in respect of a rental unit if *the landlord or a close family member of the landlord intends in **good faith** to occupy the rental unit.* (my emphasis).

However the tenant has questioned the right of the landlord to issue the Two-Month Notice to End Tenancy on the basis that the individual occupying the unit did not meet the requirement, that being “*a close family member*”.

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. If the motive for the landlord in ending the tenancy is to retaliate against the tenant or try to avoid legal responsibilities as a landlord, the intent of the landlord is not considered to be in “good faith” and dishonesty may be inferred.

In the case before me, I do not find sufficient evidence that there was any dishonesty or ulterior motive for ending the tenancy. I also find that the proposed occupant does meet the definition of “close family member”, being the son of VC, whose Estate is the owner.

A mediated discussion ensued and the parties agreed that the tenant would vacate on October 31, 2010. Accordingly, an Order of possession will be issued to the landlord effective that date. The tenant is entitled to receive the equivalent of one month rent in compensation under section 51(1) and therefore will not be required to pay rent for the final month of October 2010. Upon vacating, the parties must deal with the return of the tenant's security deposit and interest in accordance with section 38 of the Act.

**Conclusion**

I hereby issue an Order of Possession in favour of the landlord effective October 31, 2010. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

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: September 2010

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Dispute Resolution Officer