



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNL, OLC

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant to cancel a 2 Month Notice to End Tenancy ("Notice") for the Landlord's use of property and to obtain an order requiring the Landlord comply with the Act.

Service of the hearing documents, by the Tenant to the Landlord, was done in accordance with section 89 of the *Act*, sent via registered mail on September 3, 2010. The Landlord was deemed to be served the hearing documents on September 8, 2010, the fifth day after they were mailed as per section 90(a) of the *Act*.

Both the Tenant and Landlord appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, in documentary form, and to cross examine each other.

All of the testimony and documentary evidence served in accordance with the Act was carefully considered.

Issue(s) to be Decided

Is the Tenant entitled to relief sought in her Application?

Background and Evidence

The tenant has occupied the rental property since June 1, 2010, with a monthly rental of \$900.00 per month, payable on the first of each month, and a security deposit of \$445.00 being paid in May 2010.

Pursuant to Section 49 (3), a 2 Month Notice to End Tenancy for Landlord's Use of Property was issued by the Landlord on August 31, 2010, with a stated effective date of October 31, 2010, and served to the Tenant by registered mail. The Tenant confirmed this service in her verbal testimony.

Under the Act, a notice under this Section must end the tenancy effective on a date that is not earlier than two months after the date the notice is received, and the day before the day in the month that rent is payable under the tenancy agreement. Documents delivered by registered mail are deemed served on the fifth day after mailing. Thus I note the effective date indicated on the Notice is ineffective and automatically corrects under the Act to November 30, 2010. I further note that the Tenant filed her application for dispute resolution within the time in accordance with the Act.

The Landlord testified that she issued the Notice because her adult son intended to stay permanently and intended to occupy the rental unit. The Landlord's witness confirmed this testimony as did the adult son. The son testified that he moved back to town in April or May on a temporary basis, but has now decided to permanently relocate here.

The Tenant testified that she was a good tenant, quiet and good to the Landlord's dogs.

The Tenant supplied evidence that the Landlord had the rental unit advertised and questioned the good faith intent of the Landlord to move her son in.

The Landlord replied that the rental unit was advertised prior to the Notice and prior to her son's final decision to stay permanently. The son of the Landlord confirmed this statement.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

The Landlord must provide evidence to prove the "good faith" requirement for the reasons given on the Notice to End Tenancy by first truly intending to use the premises for the purposes stated, in this case that a close family member intended in good faith to occupy the unit and secondly the Landlord must not have a dishonest or ulterior motive as the primary motive for seeking to have the Tenant vacate the residential premises.

I find based on the documentary evidence, verbal testimony and a balance of probabilities that the Landlord intends in good faith to have a close family member occupy the rental unit and I hereby grant an **Order of Possession** to the Landlord effective **November 30, 2010, at 1:00 p.m.**

This order must be served on the Tenant and may be filed in the Supreme Court and enforced as an order of that Court.

Under the Act, a Tenant who receives a Section 49 notice to end tenancy is entitled to receive from the Landlord on or before the effective date of the Landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement. Therefore **I further find** that the Tenant is entitled to withhold the November 2010 rent and that amount is deemed to have been paid to the Landlord.

Conclusion

The Landlord is entitled to an Order of Possession.

The Tenant is entitled to withhold the November 2010 rent.

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: October 19, 2010.

Dispute Resolution Officer