



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNL, FF

Introduction,

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*.

The landlord applied for an order of possession pursuant to a notice to end tenancy for landlord's use of property and for a monetary order for the filing fee. The tenant applied to cancel the notice to end tenancy.

The landlord's son who intends to move into the rental unit was also present at the hearing. At the start of the hearing, I asked the landlord if there was any change in her position, from the date that the tenant had filed this application. The landlord stated that there was no change and that she still intended to pursue her plan of having her son move into the rental unit.

Both parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me. I have considered all the written evidence and oral testimony provided by the parties but have not necessarily alluded to all the evidence and testimony in this decision.

Issues to be decided

Has the landlord validly issued the notice to end tenancy and does the landlord or a close family member of the landlord intend, in good faith, to occupy the rental unit?

Background and Evidence

The rental unit located on the main floor of the house consists of a room in a home that houses other occupants. The house has three floors and eight bedrooms that are rented out mostly to students. The occupants of each floor share a common kitchen, living room and washroom. The rent is \$600.00 due on the first of each month.

The landlord's son testified that he was living with his mother at a different location and had some problems with the neighbours. He was criminally charged in November 2008 and was given a conditional discharge. The condition was that he was not to attend the area that his mother resides in for a period of one year. He therefore moved into the rental home and lived there for approximately one year. He subsequently returned to his mother's home but encountered some more problems which created a tense situation. At this time, he has to move away from the area that his mother lives in and accordingly for financial reasons, he plans to move into the rental unit. The landlord filed documents to confirm her son's testimony.

The landlord issued the tenant a two month notice to end tenancy, on October 22, 2010, to be effective on December 22, 2010.

The reason the landlord gave the notice to the tenant is described as, 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 tenant has alleged the landlord is issuing the notice in bad faith, and has other reasons for ending the tenancy.

Analysis

When the Tenant alleges bad faith on the part of the Landlord, the Landlord has an onus to prove they are acting in good faith. I find that the landlord has filed evidence to support his testimony that in 2008 he was ordered to stay away from the area that his mother resides in and that he moved into the rental unit at that time.

He moved back into his mother's home where he currently resides, but due to the problems resurfacing, he has to move away from the area. The landlord's son intends to move into the rental unit for financial reasons.

The tenant argued that the landlord had failed to act in good faith and in the absence of any evidence to support this allegation; I find the landlord has met the good faith requirement of the legislation and intends to allow her son to move into the rental unit.

Section 68 of the *Residential Tenancy Act* allows me to order that the tenancy ends on a date other than the effective date shown on the notice. Therefore, the notice is upheld and pursuant to section 55(2) I am issuing a formal order of possession effective December 31, 2010. This Order may be filed in the Supreme Court for enforcement.

Pursuant to section 55, without making application, the landlord could have requested to be granted an order of possession during the hearing, if the notice was upheld. The landlord chose to file her own application and therefore must bear the cost of filing her application.

Conclusion and Order

For the reasons given above, I dismiss the tenant's application and grant the landlord an order of possession.

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: November 30, 2010.

Dispute Resolution Officer