



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNL, MNDC

Introduction

This hearing dealt with the tenant's application for dispute resolution, seeking to cancel a notice to end tenancy issued by the landlord for the landlord's use of the property. The tenant also applied for a monetary order for a total of \$3,275.00 for the cost of moving, transferring his utility services and the return of rent paid.

Both parties appeared, 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.

Issues(s) to be Decided

Has the landlord validly issued the notice to end tenancy and does the landlord intend, in good faith, to have a close member of his family move into the rental suite?

Background and Evidence

The tenancy started on January 01, 2011. The tenant stated that he visited the rental unit mid December 2010 and paid a security deposit of \$150.00. The monthly rent is \$650.00. The rental unit is a coach house located in the back yard of the property. The landlord lives in the main house along with his parents.

The tenant stated that at the start of the tenancy, the landlord's mother informed him that she was looking for a long term tenant. The landlord agreed that at that time (January 01, 2011), he was looking for a long term tenant.

The Landlord issued the Tenant a two month Notice to End Tenancy, on January 28, 2011, to be effective on March 31, 2011. Neither party filed a copy of the notice.

The landlord stated that the reason he served the notice to the tenant is because his father who lives in the main house is 80 years old and as per the doctor's advice needs to have someone easily available for help. The landlord would like to have his brother move into the rental unit and be available to assist his father when necessary.

The landlord stated that his father received this advice when he went to visit the doctor for a routine check up. The landlord stated that his mother does not leave the home for work, but does go out to the Gym and to perform other errands.

The tenant has alleged the landlord is issuing the notice in bad faith. He stated that the landlord wanted to end the tenancy for other reasons. He stated that the landlord entered the suite without notice and accused him of smoking inside the unit. The tenant stated that the landlord told him, prior to the start of the tenancy, that he wanted a long term tenant and therefore it was highly unlikely that this would change 28 days into the tenancy.

The tenant has applied for the cost of moving into the rental unit, the cost of transferring his phone and internet to the rental unit, three months of rent and the security deposit. The tenant stated that he had just incurred these expenses on January 01, 2011 and if the landlord wanted the unit for his own use, then he should bear the cost of the tenant's move. The tenant did not file any evidence to support his claim of \$3,275.00.

Analysis

When the tenant alleges bad faith on the part of the landlord, the landlord has an onus to prove he is acting in good faith. Based on the testimony of both parties, I find that the landlord's father did not suffer any dramatic change in health that warranted 24 hour supervision. The landlord stated that his father visited the doctor for a routine check up and was unable to remember the date of the visit. In addition the landlord agreed that he was looking for a long term tenant when he entered into the tenancy agreement with this tenant.

Based on the evidence in front of me, I find that on a balance of probabilities , it is more likely than not that the landlord did not act in good faith when he served the tenant with the notice to end tenancy for landlord use of property. Therefore I set aside the notice to end tenancy. The tenancy will continue on the original terms of the tenancy agreement.

I also find that the landlord is not responsible for the moving costs that the tenant incurred to move into the rental unit. The tenant has also claimed compensation in the amount of three months' rent but has not filed any evidence to support his claim.

Conclusion

The notice to end tenancy is set aside and the tenancy will continue as per the terms of the tenancy agreement. The tenant's application for compensation is dismissed.

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: February 24, 2011.

Residential Tenancy Branch