



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNL, FF

Introduction

This hearing dealt with an application by the tenants for an order setting aside a notice to end this tenancy. Both parties participated in the conference call hearing and had opportunity to be heard.

In their application for dispute resolution, the tenants had checked a box indicating that they were disputing a notice to end tenancy for cause. At the hearing they acknowledged that they had checked the wrong box and had intended to dispute a notice to end tenancy for the landlord's use of the property. I amended the application to reflect the intention of the tenants as I found that the landlord was well aware that the purpose of the dispute resolution was to discuss the notice to end tenancy for the landlord's use of the property.

Issue to be Decided

Should the notice to end tenancy be set aside?

Background and Evidence

The parties agreed that on or about January 6, the tenants were served with a 2 month notice to end tenancy for landlord's use of property (the "Notice"). The Notice states that the landlord intends to occupy the rental unit.

The rental unit is one unit in a fourplex, adjacent to another fourplex which the landlord also owns.

The landlord testified that he intends to occupy the rental unit until the building is sold, which he expects will happen within the next 3-4 years. The landlord stated that in the approximately 30 years he has owned the building, he has lived in the building as many as 4 times. The landlord has a family and owns a home in which he and his family will continue to reside, but the landlord will occasionally stay in the rental unit and will use the outdoor area to work on his boats and vehicles. The landlord intends to keep tools at the rental unit and feels

that his presence at the property will benefit other tenants as he will be able to respond more quickly to maintenance issues and will be available to address issues as they arise.

The tenants testified that he believes the landlord is not acting in good faith. In November 27, 2010 the landlord issued the tenants a notice to end tenancy for cause. This notice was set aside in a decision dated December 21. The tenants claim that the landlord is using whatever means he can to evict them. The tenants stated that the landlord is at the residential property at least 10 times each month and that living in a different area has not prevented him from tending to the property.

The landlord denied that he issued the notice because he wants to evict the tenants and stated that he has tried to work cooperatively with them with respect to rent which was paid late.

Analysis

The landlord bears the burden of proving that he intends to occupy the rental unit and that he intends to do so in good faith. I am satisfied that he intends to occupy the rental unit in the sense that he intends not to re-rent it and to move his belongings into the unit and make occasional use of it, but I am not persuaded that he is acting in good faith.

The fact that the landlord developed this intention so soon after an unsuccessful attempt to end the tenancy calls his good faith into question. This taken together with the fact that the landlord does not intend to occupy the unit full time but appears to desire it for use as storage and a work area has persuaded me that it is more likely than not that the landlord developed this intention in order to end this tenancy. I find that the Notice was not given in good faith and I therefore order that the Notice be set aside.

Conclusion

The Notice is set aside and of no force or effect. As a result, this tenancy will continue. The tenants are entitled to recover the filing fee paid to bring their application and may deduct \$50.00 from future rent owed to the landlord.

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 04, 2011

Residential Tenancy Branch