



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes

CNL

Introduction

This matter dealt with an application by the tenant to cancel a Notice to End Tenancy for the landlords' use of the property.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and was hand delivered to the landlord on February 10, 2011. The landlord confirmed receipt of these documents.

Both parties appeared and the tenant was supported by his advocate. The parties gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. The landlord sent in evidence for his hearing however he did not send this evidence to the tenant prior to the hearing. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issue(s) to be Decided

Is the tenant entitled to cancel the Two Month Notice to End Tenancy for landlords' use of the property?

Background and Evidence

Both parties agree that this month to month tenancy started in October, 2009. Rent for this unit is \$400.00 and is due on the 1st of each month.

The landlord testifies that he served the tenant with a Two Month Notice to End Tenancy on January 31, 2011 in person. The reason on that Notice is that the rental unit will be used by the landlord, the landlord spouse or a close family member of the landlord or the landlords' spouse. The Notice has an effective date of April 01, 2011. The landlord testifies that his parents will be eventually purchasing the unit but will be moving into it first on April 09, 2011 while it is renovated.

The tenants advocate states that the tenant believes the landlord has not acted in good faith by issuing this Notice. The tenants advocate states that a previous hearing was held in October, 2010 where the landlord was awarded an Order of Possession. The tenants advocate states the tenant asked for a Judicial Review of that Decision and Order and the Order has had a stay put upon it by the Supreme Court. (Copy included).

The tenant testifies that he believes that the landlords good faith in issuing another Notice to end his tenancy is in question as he has proved no evidence to show that his parents will be moving into the unit, the condition of the unit is not good and he believes as the previous Order has a stay on it by the Supreme Court the landlord is just attempting to evict him by another means.

Analysis

With regard to the landlords evidence that was not provided to the tenant pursuant to 4.1 of the Rules of Procedure. It is my decision that I will not accept this evidence as in doing so and allowing an adjournment of the hearing today to give the tenant time to review the evidence it will delay any decision concerning the Two Month Notice and would prejudice the other Party pursuant to s. 11.5 (b) of the Rules of Procedure. I find therefore the landlords' evidence is not admissible.

I have carefully considered all the admissible evidence before me, including the affirmed evidence of both parties. As this application and Two Month Notice are separate from the previous One Month Notice issued to the tenant I will deal with this application as a separate entity.

In this matter, the landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof. When a tenant also brings into question the landlords good faith in issuing this Two Month Notice the landlord must provide sufficient evidence to support the reason given on the Notice.

In the absence of any corroborating evidence, I find that the landlord has not provided sufficient evidence to show that grounds exist to end the tenancy for the landlords' use of the property. As a result, the Notice is cancelled and the tenancy will continue.

Conclusion

The tenant's application is allowed. The Two Month Notice to End Tenancy for landlords use of the property dated January 31, 2011 is cancelled and the tenancy will continue.

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