



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNL

Introduction

This hearing dealt with an application by the tenants to cancel a 2 month notice to end tenancy for landlord's use of property.

Issue(s) to be Decided

Are the tenants entitled to any of the above under the Act.

Background and Evidence

This fixed term tenancy began June 2009 with monthly rent of \$800.00, the tenants paid a security deposit of \$400.00. On February 28, 2011 the landlord served the tenants with a 2 Month Notice to End Tenancy for Landlord's Use of Property: the rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse.

The tenants testified that the landlord has an empty 1 bedroom residence on his property and that they do not believe that the landlord intends on housing his granddaughter in the 2 bedroom residence that the tenants occupy. The rental unit that the tenants occupy is located on a different property than that of where the landlord resides. The tenant's are very anxious about having to move and felt that the notice had been given after the tenants stopped the landlord from working on the property in December 2010. The tenants believed that the landlord's granddaughter became part of the family holding company only to get them off the property.

The landlord's agent testified that the landlord's granddaughter is now a member of the family holding company for the property. The landlord's agent stated that as the granddaughter is a member of the family holding company she would have the right to occupy the rental unit as she intends to do.

The landlord's agent agreed in this hearing to allow the tenants to not pay the April 2011 rent and this would act as the 1 month's compensation that the landlord is required to provide tenants when giving a 2 month notice for landlord's use of property. This was clarified for the tenants and they understood that payment of the April 2011 rent would not be required and that they would vacate the rental unit April 30, 2011 per the notice.

Analysis

Based on the documentary evidence and testimony I find the tenants were not properly served with a 2 month notice to end tenancy for landlord's use of property therefore the tenancy will remain in place.

The landlord provided the tenant's a notice based on section 49 (3) of the *Act*: *'The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse'*.

The landlord's agent in this hearing testified that the granddaughter is now a member of the family corporation and based on that designation would be occupying the rental unit however the notice given to the tenants is not for 49 (4) of the *Act*: *'A family corporation owns the rental unit and it will be occupied by an individual who owns, or whose close family members own, all the voting shares'*.

Accordingly, the notice to end tenancy is hereby set aside and the tenancy continues in full force and effect.

Conclusion

The 2 month notice to end tenancy for landlord's use of property dated February 28, 2011 is hereby set aside and the tenancy continues in full force and effect.

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: March 25, 2011.

Residential Tenancy Branch