



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNL, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenants to cancel a 2 Month Notice to End Tenancy for the Landlord's use of property and to recover the filing fee paid for the application.

Both the Tenants and the Landlord's Agent appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, in documentary form, and to cross examine each other.

Issue(s) to be Decided

Has the Landlord established that the Landlord, or a close family member of the Landlord, intends in good faith to occupy the rental unit?

Background and Evidence

This month to month tenancy began on August 1, 2003, current monthly rent is \$1,285.00 and a security deposit of \$575.00 was paid by the Tenant on July 25, 2003.

The subject of this dispute is the *2 Month Notice to End Tenancy for Landlord's Use of Property* (the "Notice") issued on February 28, 2011, by registered mail, with a move out date listed as April 30, 2011. The reason indicated on the Notice is that the rental unit will be occupied by the landlord, the landlord's spouse, or close family member of the landlord or landlord's spouse.

Pursuant to the rules of procedure for the Residential Tenancy Act (the "Act"), the Landlord's Agent proceeded first in the hearing and testified as to why the Tenants had been served with the 2 Month Notice to End Tenancy for Landlord's Use of Property.

The Landlord's Agent submitted relevant evidence the tenancy agreement, a handwritten note from the Landlord's sister stating that the Landlord's sister's grandson

would be relocating to the area during the spring/summer and that the Landlord wished to secure the suite for the grandson's use and occupancy, and an email from the Landlord's sister's grandson indicating he was to relocate to the area on July 1st.

The Tenant submitted relevant evidence photos of the rental building, a copy of the Notice, a copy of a 2 Month Notice to End Tenancy for Landlord's Use to a tenant in another unit in the building, and email correspondence between the Tenant and the Landlord's Agent.

The Landlord's Agent confirmed that the close family member was the Landlord's sister's grandson.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

Only the evidence and testimony relevant to the issues and findings in this matter are described in this Decision.

Under the Act, a landlord may end a tenancy for landlord's use pursuant to section 49 of the Act. Section 49(3) provides "a landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or close family member of the landlord intends in good faith to occupy the rental unit". (my emphasis added)

The Tenants' evidence shows that the Landlord has issued 2 Month Notices to End Tenancies to at least two separate units in the building, including the rental unit which is the subject of this dispute, for the same cause, Landlord's Use of Property to be occupied by a close family member. Further the evidence submitted by the Landlord's Agent provides conflicting statements from the Landlord's sister and the Landlord's sister's son, with the sister stating her grandson would be relocating to the city in the spring and summer and the grandson submitting an email stating he would be moving on July 1. These inconsistencies call into question the validity of the intention of the Landlord.

However, I find that it is not necessary to determine this dispute on the question of the Landlord's good faith because I find the Notice is not valid.

Section 49 of the Residential Tenancy Act, as well as the Notice itself, defines close family member as the father, mother, spouse or child of the individual Landlord.

Therefore, the Landlord's or Landlord's sister's grandson does not meet the definition of close family member under the statute.

Based on this finding, I find that the 2 Month Notice to End Tenancy for Landlord's Use of Property issued in this matter is not valid, not supported by the evidence and I order it be cancelled. The Notice is of no force or effect and the tenancy will continue until ended in accordance with the *Residential Tenancy Act*.

I find that the Tenants have succeeded in their Application and that they should recover the filing fee from the Landlord. I direct that the Tenants withhold \$50.00 from a future month's rent payment.

Conclusion

The 2 Month Notice to End Tenancy for Landlord's Use of Property issued in this matter is not valid, not supported by the evidence and it is cancelled.

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: April 04, 2011.

Residential Tenancy Branch