



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 was scheduled to deal with a tenant's request to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property. Both parties appeared at the hearing and were provided the opportunity to make submissions, in writing and orally, and to respond to the submissions of the other party.

Issue(s) to be Decided

Should the Notice to End Tenancy for Landlord's Use of Property be upheld or cancelled?

Background and Evidence

The tenant has been residing at the residential property for approximately 8 years, first in the basement unit and then approximately three years ago she moved to the upper unit. The tenant's father formerly owned the property and was her landlord. In January 2011 the current landlord purchased the property from the tenant's father. As part of that agreement the tenant's father was to make certain repairs and improvements to the property before May 30, 2011.

The current landlord and tenant signed a new month-to-month tenancy agreement after the current landlord purchased the property. I was not provided a copy of the tenancy agreement; however, the parties agreed that the tenant is required to pay the landlord rent of \$925.00 on the 1st day of every month and rent includes up to \$300.00 per month for utilities, including hydro. The parties also agreed that the tenant is required to perform basic yard maintenance duties under the tenancy agreement.

On March 25, 2011 the landlord sent a 2 Month Notice to End Tenancy for Landlord's Use of Property (the Notice) via registered mail. The Notice has an effective date of June 1, 2011 and the reason for ending the tenancy is that "the landlord intends to

convert the rental unit for use by a caretaker, manager or superintendent of the residential property”.

The landlord stated that he issued the Notice because he wishes his caretaker to reside in the unit. The caretaker will be responsible for repairing and maintaining both units at the residential property and the rental unit located at the landlord's residence. In addition the caretaker would manage the day-to-day activities required of a landlord. The landlord's reason for hiring a caretaker was that he is a busy single father and does not want to spend his free time tending to rental properties.

As evidence of the landlord's intention to use the unit for a caretaker, the landlord provided a copy of a document entitled “Residential Caretaker Agreement” dated March 25, 2011. The name of the caretaker is blacked out and so is the amount of rent payable by the caretaker. The landlord testified that the caretaker will be paying the same amount of rent as is currently paid by the tenant except hydro will not be included for the caretaker. In addition, the caretaker will have caretaking duties to perform.

The tenant questioned the landlord's motivation in ending her tenancy. The tenant submitted that in dealing with the landlord in the past he would communicate to her that he hoped she would be a long term tenant. The tenant submitted that the landlord is motivated by higher rent and because her father had not completed the items in the sales agreement when the current landlord wanted them completed.

The tenant called a witness, the basement unit tenant, during the hearing. The witness testified that in a telephone conversation she had with the landlord the landlord told her the reason he issued the Notice to End Tenancy was because the tenant's father had not performing the tasks he was required to do when the landlord wanted him to.

The landlord denied making such statements to the witness and denied that the Notice has anything to do with the sales agreement with the tenant's father. In fact, the caretaker is an electrician, as is the tenant's father, and his caretaker will perform many of the items that were to be done by the tenant's father. The landlord submitted that the witness is biased as the witness came to be a tenant of the basement unit through the tenant.

Documentary evidence considered in making this application is the Notice to End Tenancy, the Residential Caretaker Agreement, the witness' written statement, and the list of repairs to be done by the tenant's father under the sales agreement.

Analysis

The landlord has given a Notice to End Tenancy to the tenant for a reason provided under section 49(6) of the Act. Section 49(6) provides that

A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and **intends in good faith** to do any of the following:

- (e) convert the rental unit for use by a caretaker, manager or superintendent of the residential property;

Residential Tenancy Policy Guidelines provide the policy intent of the legislation in the context of the common law and the rules of statutory interpretation. Residential Tenancy Policy Guideline 2 provides for the good faith requirement in ending a tenancy for landlord's use. It states, in part:

The "good faith" requirement imposes a two part test. First, the landlord must truly intend to use the premises for the purposes stated on the notice to end the tenancy. Second, the landlord must not have a dishonest or ulterior motive as the primary motive for seeking to have the tenant vacate the residential premises.

For example, the landlord may intend to occupy or convert the premises as stated on the notice to end. That intention may, however, be motivated by dishonest or undisclosed purposes. If the primary motive for the landlord ending the tenancy is to retaliate against the tenant, then the landlord does not have a "good faith" intent. Similarly, if the landlord is attempting to avoid his/her legal responsibilities as a landlord, or is attempting to obtain an unconscionable or undue advantage by ending the tenancy, the intent of the landlord may not be a "good faith" intent. Rather, the circumstances may be such that dishonesty may be inferred.

If the "good faith" intent of the landlord is called into question, the burden is on the landlord to establish that he/she truly intends to do what the landlord indicates on the Notice to End, and that he/she is not acting dishonestly or with an ulterior motive for ending the tenancy as the landlord's primary motive

Upon hearing from the tenant, the former owner, and the witness, I am satisfied the tenant has called into question the landlord's good faith intention. Accordingly, the

landlord has the burden to show that he is not acting dishonestly or with an ulterior motive.

The landlord has stated that he is not acting with an ulterior motive to end this tenancy; however, I am not without considerable doubt when I consider the following:

- The landlord acknowledged that the “caretaker” would pay the same rent and hydro. The landlord made mention that the tenant leaves lights on at the property. Thus, having the tenancy end would be a monetary incentive for the landlord.
- The landlord did not produce the party who signed the caretaker agreement as a witness during the hearing and the caretaker duties could not be verified.
- The document entitled “Residential Caretaker Agreement” more closely resembles a tenancy agreement than an agreement for caretaking duties. To illustrate: the agreement provides that the agreement shall terminate for failure to pay rent or comply with the Occupancy Guidelines. No “Occupancy Guidelines” are provided although there is a section of the agreement entitled “Guidelines”. The Guidelines provide that the caretaker is to pay all utilities, hold each other harmless, and accept the property “as is”. The agreement does not specify any caretaking duties such as collecting rent, entering into tenancy agreements, conducting condition inspection reports, repairing the property, or other typical landlord duties. I do not find that merely substituting “caretaker” for “tenancy” or “caretaker” for “tenant” is evidence of a caretaker agreement.

Given the landlord’s burden to satisfy the two part good faith requirement and in light of the above considerations, I find the landlord’s evidence to be insufficient to meet the burden upon him. Therefore, I grant the tenant’s request to cancel the Notice to End Tenancy for Landlords’ Use of Property with the effect that this tenancy shall continue.

As the tenant has been successful in this application, I award the filing fee to the tenant. The tenant is authorized to withhold \$50.00 for future rent payable to the landlord.

Conclusion

The Notice to End Tenancy has been cancelled and this tenancy remains continues.

The tenant has been awarded the cost of the filing fee and is entitled to withhold \$50.00 from rent otherwise payable to the landlord in satisfaction of this award.

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 29, 2011.

Residential Tenancy Branch