



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

This matter dealt with an application by the Tenant to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property.

Issue(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?

Background and Evidence

This month-to-month tenancy started on May 1, 2008. Rent is \$980.00 per month. The Landlord is a shareholder of a family corporation that purchased the rental property on April 28, 2011. On May 3, 2011, the Landlord served the Tenant with a 2 Month Notice to End Tenancy for Landlord's Use of Property by posting it to the rental unit door. The grounds stated on that Notice were as follows:

- 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; and
- 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.

The Landlord said she gave the Tenant the 2 Month Notice because her youngest son, (who is also a shareholder in the family corporation) will be residing in the rental unit. The Landlord said one of the reasons she purchased the rental property was so that her children could reside there. The Landlord said she also gave a 2 Month Notice to the tenants in suite #311 (a 2 bedroom unit) because her eldest son will be moving into that suite.

The Tenant initially argued that he believed the Landlord really wanted to end the tenancy so that she could do renovations and increase the rent. The Tenant then admitted that he was not disputing that the Landlord's son wanted to move into the rental unit but argued that her son could have moved into a neighbouring, vacant unit in

the rental property. The Landlord claimed that her youngest son selected the Tenant's rental unit specifically because it had a north exposure and would be cooler and with less direct sunlight (because he has a sleep disorder). The Landlord claimed that the neighbouring suite referred to by the Tenant had a southern exposure but in any event it had been re-rented as of May 1, 2011.

The Tenant also argued that the Landlord's youngest son could reside in the 2 bedroom suite with his older brother. However, the Landlord claimed that her eldest son intended to reside in that unit with his girl friend and to use one of the bedrooms as a studio. The Landlord said there are currently no other vacant units in the rental property which the Tenant did not dispute.

Analysis

RTB Policy Guideline #2 says that "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."

The Tenant did not dispute that the Landlord's youngest son intended to reside in the rental unit however he argued that there were other vacant suites in the rental property that could have been used for that purpose instead. The Landlord admitted that a neighbouring suite was vacant for a few days but claimed that it was re-rented before she served the 2 Month Notice on the Tenant. The Landlord also claimed that the only other vacant suite in the rental property was going to be occupied by her eldest son and that he wanted it for his own use.

I find that there is little evidence that the Landlord was acting dishonestly or with an ulterior motive when she served the Tenant with the 2 Month Notice. In particular, I find that the Landlord asked her children to select a suite in the rental property that best suited their needs and issued the Notice(s) to End Tenancy on that basis. While a neighbouring suite was available for a short time, I find that it was re-rented prior to the Landlord serving the 2 Month Notice on the Tenant. Consequently, I find that the only other available suite in the rental property was #311 which is to be occupied by the Landlord's other son and I find that there is no obligation on the Landlord to use one suite for both of her adult children.

Conclusion

For all of these reasons, I find that there are grounds for the 2 Month Notice and the Tenant's application to cancel it is dismissed without leave to reapply.

Consequently, the 2 Month Notice to End Tenancy for Landlord's Use of Property served on May 3, 2011 remains in force and will take effect on July 31, 2011. Pursuant

to s. 50 and 51 of the Act, the Tenant will be entitled to receive his last month's rent free or alternatively, if he gives the Landlord earlier written notice (pursuant to s. 50) to compensation equal to one month's rent.

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: June 08, 2011.

Residential Tenancy Branch