



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF

Introduction

This hearing was convened by way of conference call to deal with the tenant's application for an order cancelling a notice to end tenancy for the landlord's use of the rental unit and to recover the filing fee from the landlord for the cost of this application.

The landlord and the tenant both attended the conference call hearing, gave affirmed testimony and were provided an opportunity to cross examine each other on their evidence. All evidence and testimony provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling a notice to end tenancy for the landlord's use of the rental unit?

Background and Evidence

This month-to-month tenancy began in 1993, and the tenant and his family moved into another suite within the rental building in 1997. Rent in the amount of \$1,600.00 per month is payable in advance on the 1st day of each month, and there are no rental arrears. The landlord did not collect a security deposit or pet damage deposit from the tenant.

The tenant testified that the building originally had 3 units, and in 1997 the landlord converted the basement suite into 2 units. The landlord is the brother-in-law of the tenant. The tenants that were in the main floor of the building were told that their unit was needed for a family member of the landlord, being the current tenant, his brother-in-law. Eventually, the landlord's daughter and her family moved into one of the basement suites and the other is rented by a tenant who is not related to the parties. The tenant stated that the landlord should issue a notice to end the tenancy of the tenant that is not related, and renovate the 2 downstairs units into one unit again so that he would not be required to move. He feels that since the landlord has evicted another tenant for

landlord's use of property and is attempting to do so again, that the landlord's actions are a misuse of the legislation.

The landlord testified that the tenant's 2 older children have moved out and currently has one child, age 14, living at home. The tenant's wife is from Japan and has been there alot until the earthquake, and the landlord feels that the tenant is no longer in need of a rental unit that size. He stated that the current rental unit of the tenant is about 1500 square feet and the basement suite that his daughter currently resides in is about 700 square feet.

The landlord further testified that his daughter, her partner and her 2 year old child currently live in the basement suite and it's too small. Also, the landlord cares for the child and if she moves to the tenant's suite, the landlord and his daughter will have adjoining suites and this arrangement will make it like they're living in the same house instead of only being able to access each other's suite from the outside.

The landlord also testified that he served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use of Property on April 4, 2011 by registered mail. A copy of the notice was provided in advance of the hearing, and it is dated April 3, 2011 and contains an expected date of vacancy of June 30, 2011. It also states that 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.

Analysis

The *Residential Tenancy Act* states that a landlord may end a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. A close family member is defined as the father, mother, spouse or child of the landlord or of the landlord's spouse.

The *Act* further states that the landlord must serve the tenant with a 2 Month Notice to End Tenancy for Landlord's Use of Property and must provide a full 2 months notice, and reimburse the tenant the equivalent of one month's rent, or the tenant may withhold the last month's rent instead of being paid compensation.

In this case, I find that the tenant has failed to establish that the landlord is not acting in good faith or that the landlord is in breach of the *Act*. I find that the notice is in compliance with the *Act*, has been served on the tenant appropriately, and the landlord genuinely intends for his daughter and her family to reside in that unit. The tenant did not dispute that evidence.

With respect to the tenant's claim that the landlord has misused the legislation by evicting another tenant prior, the legislation at that time is not the legislation that is in place today. If the legislation that exists today had existed in 1997, the landlord would not have had the right to evict the tenant that resided in the unit because the relationship of the parties did not fall within the definitions of a close family member of the landlord. The landlord's daughter does fall within the definitions of a close family member, and today's legislation applies.

In the event that the landlord does not take steps to accomplish the stated purpose for ending the tenancy within a reasonable time after the effective date of the notice, or if the unit is not used for that stated purpose for at least 6 months, the tenant will be at liberty to apply for a monetary order equivalent to double the monthly rent.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed.

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: May 19, 2011.

Residential Tenancy Branch