



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 in response to an application by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order Cancelling a Notice to End Tenancy – Section 49; and
2. An Order to recover the filing fee for this application.

The 2 Month Notice to End Tenancy for Landlord’s Use of Property (the “Notice”) was issued for the following reason: The landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Notice valid?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The tenancy began on December 1, 2010. Rent in the amount of \$1,000.00 is payable in advance on the first day of each month. At the outset of the tenancy, the Landlord collected a security deposit from the Tenant in the amount of \$1,500.00.

On July 1, 2011, the Landlord served the Tenants with the Notice. The Tenant sent the Landlord an email on that date advising the Landlord that while he had no problem ending the tenancy, the Tenant requires that the Notice be a valid Notice. The Tenant further informed the Landlord in this email that having received information from the Residential Tenancy Branch that the amount paid for the security deposit was greater than what is allowed under the Act, the Tenant was deducting \$1,000.00 from the July 2011 rent payable. It is noted from information on file that this was deduction has occurred and the Landlord now retains only \$500.00 for a security deposit.

Three weeks after receipt of the Notice, the Tenants state that they learned that the Landlord was not demolishing or renovating the unit but was placing it for sale. The Landlord states that the final intention is to sell the unit and that it has been listed temporarily but that renovations are to be done in order to sell the unit. The Landlord states that the carpets will be replaced, two doors fixed and the walls will be painted. Generally, the Landlord states that the renovations are to beautify the property for the sale. The Tenant states that the renovations being contemplated by the Landlord do not require that the unit be vacant.

Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, on a balance of probabilities, that the tenancy should end for the reason or reasons indicated on the Notice. In this case, given the Notice and reasons for the Notice, the Landlord must intend in good faith to renovate the unit. Further these renovations must also require that the unit be empty. Considering the Landlord's stated intention to sell the unit and considering the type of renovations being planned to the unit, I find that the Landlord does not have a good faith intention to renovate the unit to such a degree that the unit is required to be empty. Accordingly, I find that the Notice is not valid, I order the Notice cancelled and I order the tenancy to continue.

As the Tenant has been successful with the application, I find that the Tenants are entitled to the recovery of their filing fee and I order the Tenants to reduce their next rent payable by the amount of \$50.00.

Conclusion

The Notice to End Tenancy is cancelled and of no effect. The tenancy continues.
I Order the Tenants to reduce their next rent amount payable by \$50.00.

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: September 06, 2011.

Residential Tenancy Branch