



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL FF

Introduction

This hearing dealt with an application by the tenants to cancel a notice to end tenancy. Both tenants and the landlord participated in the teleconference hearing.

The tenants and the landlord submitted documentary evidence prior to the teleconference hearing.

The tenants did not give the landlord copies of some of their evidence, comprised of photographs, copies of cheques and a sketch of the floor plan of their rental unit. I therefore did not admit or consider that evidence.

I heard testimony from the landlord regarding the validity of the notice to end tenancy, and then I heard the tenants' response to the landlord's evidence.

As neither party submitted a copy of the notice to end tenancy, I asked the landlord to fax in a copy of the notice after the teleconference hearing concluded. The landlord wished to submit further evidence by fax. I informed the landlord that I would not accept any further evidence other than the notice to end tenancy, as the landlord had received notice of the hearing as well as instructions that parties to the dispute resolution hearing must submit all evidence prior to the hearing, in accordance with the rules of procedure.

At this time, the landlord became quite agitated and stated that I had not listened to anything she had said. I repeatedly attempted to speak, to assure the landlord that I had heard and would consider her testimony, but she would not allow me to speak. As the landlord was not complying with my direction in accordance with the rules of procedure, I concluded the teleconference hearing.

I have reviewed all evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Background and Evidence

The tenancy began approximately six years ago. The rental unit comprises the upper floor of a house that contains two other rental units on the lower floor.

On July 31, 2011 the landlord served the tenants a two-month notice to end tenancy for landlord's use. The notice indicates that the reason for ending the tenancy is that the landlord has all the necessary permits and approvals required by law and intends in good faith to renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

The landlord's evidence regarding the notice to end tenancy was as follows.

The house is 25 years old, and needs repairs. The lower level of the house has radiant heating, and the landlord received complaints from the downstairs tenants about the heating. The landlord intends to repair the heating system downstairs and change the heating upstairs.

The house also requires other repairs, as there have been problems with rats, the upstairs bathroom is leaking, the hot water tank is not operating properly, the windows need to be replaced, the front door does not close properly, and there are problems with the electrical system, the central vacuum and the alarm system.

In order to do this work, the water and electricity will be shut off for an unknown period of time. The contractors will not do the work if the tenants are still in the rental unit. The landlord also served the downstairs tenants with a two-month notice to end tenancy.

The tenants' response was as follows.

The landlord did not inform the tenants until September 9, 2011 of the repairs she intended to do. The tenants' rental unit has not experienced any serious heating problems since the beginning of the tenancy. The only problem with the hot water tank was that the landlord set the temperature too low. The floors in the upper unit are wood, and the tenants don't know if it can be converted to radiant heating. The tenants informed the landlord that they would be willing to put their furniture and possessions in the garage and move out of the house while repairs were being done.

The tenants do not believe that the landlord issued the notice to end tenancy with a good-faith intention to do renovations. The tenants began to experience conflict with the landlord in late 2010, when the tenants in the lower east side suite vacated and the landlord suggested that the upstairs tenants could rent that suite and then sublet it to students. The tenants did so, but only a few days after new tenants moved into the suite, the landlord told the tenants that the new tenants could not cook in the suite. The students then moved out and the tenants told the landlord they could not rent and sublet the suite.

Analysis

I find that the notice to end tenancy is not valid. The landlord did not provide sufficient evidence to establish that she intends to do repairs or renovations such that vacant possession is required. The tenants were willing to remove their possessions and vacate the suite while work was being done, so it would not be necessary to end the tenancy. Furthermore, the landlord did not provide any evidence whether any permits were necessary to do the intended work. Finally, I am not satisfied that the landlord had a good-faith intention to do the repairs or renovations.

Conclusion

The notice to end tenancy is cancelled, with the effect that the tenancy continues.

As the tenants were successful in their application, they are entitled to recovery of the filing fee for the cost of their application. The tenants may deduct \$50 from their next 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: September 13, 2011.

Residential Tenancy Branch