



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

This application was brought by the tenant on October 7, 2011 seeking to have set aside a two-month Notice to End Tenancy for landlord use dated and served in person on September 26, 2011 and setting an end of tenancy date of November 30, 2011.

Issue(s) to be Decided

This application requires a decision on whether the Notice to End Tenancy of September 26, 2011 should be set aside or upheld

Background and Evidence

This tenancy began on August 1, 2011 although the tenant did not move in until August 8, 2011. Rent is \$550 per month and the landlord holds a security deposit of \$550 paid on or about July 30, 2011.

The rental unit is in a secondary building on the rental property and there is some disagreement between the parties as to whether the tenant's exclusive use is for one room only or whether it extends to the entire building. The landlord resides in the main house and occasionally uses part of the rental building as a gym.

The landlord purchased the rental property building approximately one year ago and this was the first tenancy.

As is custom when a tenant's application includes a request to set aside a Notice to End Tenancy, the landlord was asked to support her reasons for issuing it.

The landlord gave evidence, supported by a neighbour who attended as a witness,, that the neighbour – on noting that the landlord had acquired a tenant – had advised her that the former owner had run afoul of local bylaws as the structure was not approved to be used as a rental unit. The landlord stated that she had checked with municipal officials who confirmed that the structure was only approved for use for a home business.

The landlord stated that now that she is aware that the structure is non-conforming for rental use, she has no intention of seeking another tenant in future.

The tenant said he believed the notice had not been served in “good faith” and could not be taken at face value as it was given in retaliation for a disagreement that had arisen over the landlord’s use of the one room for exercising.

The landlord submitted a copy of the original advertisement for the unit which offered a “room” for rent and she noted that the move-in condition inspection report noted that she would be using the one room as a gym. .

Analysis

Section 49(3) of the Act provides that a landlord may issue a two-month notice to end tenancy for landlord use in a circumstance in which the landlord intends in good faith to occupy the rental unit.

The principle of good faith is generally tested against whether the landlord truly intends to use the rental unit for the purpose stated on the Notice to End Tenancy or whether there is another primary, ulterior motive.

I accept the evidence of the landlord that she has no intention of seeking a further tenancy and that her willingness to forego the potential income of renting the space eliminates the question of an economic ulterior motive. With the testimony of the landlord and witness indicating a continuing tenancy might well lead to neighbourhood complaints to the municipality, I find on the balance of probabilities that the notice was issued in good faith.

Accordingly, I find that the Notice to End Tenancy of September 26, 2011 is lawful and valid and cannot be set aside.

The parties are aware that, with the notice pending, if the tenant finds suitable accommodation earlier, he may end the tenancy with 10 days notice as permitted under section 50 of the *Act*.

The parties are also aware of the provisions of section 51 of the *Act* which entitles the tenant to the last month's rent free and provides that he may make application for compensation if the landlord does not use the rental unit for the purpose stated on the notice.

As I did not have a complete copy of the rental agreement and as the tenant stated he did not have a copy of the move-in condition inspection report referring to common area in the rental building, I am unable to make a finding on the question of exclusive use. However, I would encourage the parties to continue as they have for the past three months in reasonable sharing of the claimed common area.

As a final note, the landlord has promised to provide the tenant with another copy of the move-in condition inspection report.

Conclusion

The Notice to End Tenancy of September 26, 2011 is lawful and valid, it is upheld and the tenancy will end no later than 1 p.m. on November 30, 2011.

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: November 02, 2011.

Residential Tenancy Branch