



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

This hearing was convened in response to an Application for Dispute Resolution filed by the tenant. The tenant is seeking to cancel a Notice to End Tenancy given for landlord's use.

Both parties appeared at the hearing and gave evidence under oath.

Issue(s) to be Decided

Has the landlord met the burden of proving that the landlords or a close family member intend in good faith to occupy the rental unit?

Summary Background and Evidence

The female tenant testified that this tenant used to be the building's caretaker however she is no longer the caretaker. The female landlord testified that her daughter will now be taking over the role of caretaker and the landlords require the tenant's rental unit for their daughter to occupy. The landlord says their son also intends to move into the rental unit with his sister at a later date.

The landlord stated that originally they owned the building with another couple. On July 15, 2011 the other couples' half interest in the building was transferred to the landlords' son. The landlord maintains that since her son bought out the other couples' interest in the property no new tenancy agreement has been negotiated with this tenant. The landlord says she has tried to negotiate a new tenancy agreement with the tenant without success. The landlord therefore maintains that no tenancy agreement exists with this tenant. The landlord says they would welcome the tenant to remain as a tenant although the tenant is no longer required as a caretaker because the landlords' daughter will be taking over.

The tenant testified that she has been living at the rental unit since 1992. The tenant testified that she assumed the role of caretaker after she moved in and maintained that

role for approximately 14 years of her tenancy. The tenant says that her suite is not related to her employment as a caretaker and, in fact the suite is not the ideal suite for a caretaker as it is on the fourth floor.

The tenant believes that this current Notice to End Tenancy, like the previous Notice, has not been issued in good faith. The tenant believes that this is simply another attempt by the landlord to free up her suite so that the landlords can obtain more rent for the suite. The tenant testified that the landlords have repeatedly tried to get her to negotiate a new tenancy agreement and/or agree to a rent increase. The tenant says that the landlords believe the market rent for the suite to be \$1350.00. The tenant supplied the emails in evidence. In one email the landlord states:

If you should choose to continue your tenancy in Suite 401 after September 30th at a rent of \$1200 please notify us before August 30th. We would need you to sign a tenancy agreement and we would welcome you as a tenant.

To which the tenant responded:

I *have* a tenancy agreement; I intend to remain in Suite 401 and am prepared to pay rent of \$725.00 per month.

The tenant says she also takes issue that the landlords say she quit her job as the building caretaker. The tenant says that during the course of her employment as caretaker she has been injured as a result of the physical demands of the job. The tenant says that the landlords expressed their concern that she could not do the job properly given her injuries. The tenant says that on August 22, 2011 the landlords terminated her employment by way of an email. On August 25, 2011 the tenant responded to the landlords accepting that her employment with the landlords had been terminated. The tenant says that she did not resign her position as caretaker.

The tenant says that the landlords have repeatedly attempted to have her evicted, in September 2011 the tenant was served with a one month Notice to End Tenancy stating that the tenancy had to end because the tenant's employment with the landlord had ended and the rental unit was required for a new caretaker. The tenant disputed this Notice and on September 20, 2011 a Dispute Resolution Officer allowed the tenant's application based on a finding that the landlord had an ulterior motive for ending the tenancy and did not meet the good faith requirement for issuing such a Notice.

Then on the day the tenant received the decision on that Notice, the landlords served a new Notice on September 23, 2011. This time the landlord issued a 2 month Notice to

End Tenancy for Landlord's use of the rental property. This is the Notice which is the subject of these proceedings.

The tenant also submits that if the landlords require a caretaker's suite, suite 102 is available for that purpose. Further, the tenant submits that the landlords' daughter is attending university in Paris and could not possibly be intending to come to reside in the suite and take over caretaker duties.

The landlord agrees that her daughter is undertaking doctorate studies at a university in Paris but that she will be able to travel back and forth as required to defend her thesis.

The landlord has submitted an unsworn statement from her son detailing his version of events and noting that his sister "...who has another year of studies to complete her degree..." immediately offered to move into the suite and take over the responsibilities of caretaker to reduce her monthly expenses.

The landlords have also submitted an email from "MH" (the tenant's daughter) dated September 25, 2011 stating that she was excited about moving in and that

It would have been a rush for me to move in at the beginning of October anyway as my prof has several things that he wants me to do and this gives me more time to help him out.

(reproduced as written)

Neither the landlords' son nor daughter appeared at the hearing. The female landlord stated that her children were unable to attend, along with the other landlord, due to a family emergency.

Analysis

The testimony of the tenant and the landlord is conflicting. The onus or burden of proof is on the party making the claim. When one party provides testimony of the events in one way and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails. I find this to be the case in this regard. I find that the landlord has failed to bring sufficient evidence to show that either of her children intends to occupy the rental unit. Neither of the children attended the conference call hearing to supply direct, sworn evidence. While an email and statement were supplied neither of

these documents were sworn. I therefore give these items significantly less weight than I would give sworn Affidavit materials.

Further, I find that the evidence shows that the landlords have an ulterior motive for wishing to end this tenancy. I make this finding based on the evidence that the landlords have denied that they have a tenancy agreement with this tenant and have attempted to negotiate a new tenancy agreement which would raise the tenant's rent beyond the increase that would be allowed under the *Residential Tenancy Act*.

A landlord's obligations under the Act remain with the land. This means that any tenancy agreement in place at the time of a change in landlord remains valid; that the landlords may not have been aware of the requirements of the Act is surprising. In any event, the tenant was not required to negotiate a new tenancy agreement, as she pointed out to the landlords she already had a tenancy agreement.

Based on a balance of probabilities I find that the landlords' denial that a tenancy agreement existed and their attempts to compel the tenant negotiate a new agreement at a substantially higher rent to be the real motive for their wishing to end this tenancy.

Overall I am not satisfied that the landlord has met the burden of proving good faith or of proving cause to end this tenancy. The tenant's application is allowed. The effect of this decision is that this tenancy shall continue as though no Notice to End Tenancy had been issued. As the tenant has been successful in this application I find she is entitled to recover the filing fee she has paid. To realize this sum I direct the tenant to deduct \$50.00 from her next rental payment.

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 07, 2011.

Residential Tenancy Branch