



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

This hearing dealt with an application by the tenant to cancel a notice to end tenancy. The tenant and an agent for the landlord participated in the teleconference hearing.

The tenant submitted evidence that he served on the landlord one day prior to the hearing by leaving the evidence at the landlord's office. In the hearing the landlord's agent stated that he had not received the tenant's late evidence. I therefore did not admit or consider this evidence.

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 on January 1, 2006. The tenancy agreement for the rental unit includes a clause that states as follows: "The lease is for 1 year renewable on a yearly basis by mutual agreement."

On October 29, 2011 the landlord served the tenants with a notice to end tenancy for landlord's use by posting the notice to the tenants' door. The notice indicates the reason for ending the tenancy is that the landlord has all necessary permits and approvals required by law to repair the rental unit in a manner that requires the rental unit to be vacant.

Landlord's evidence

The landlord intends to renovate the rental unit to a modern condition. The renovations will be top to bottom and will take two months to perform. The work will be extensive and will require the rental unit to be vacant.

In regard to the lease in general, the landlord has had difficulty with getting the tenants to provide yearly renewal letters for their lease. In 2011 the tenants were given ample opportunity to renew the lease, but on October 25, 2011 the tenants refused. The landlord submitted that the tenants are currently residing at the disputed address without a lease agreement for 2011 and are also not renting within a month to month arrangement.

Tenant's response

The tenant questioned the landlord's good-faith intention to renovate the rental unit. The tenant submitted that the landlord has issued the notice to end tenancy because the tenants have refused to renew their lease at a higher rent, and the landlord now wishes to end the tenancy in order to obtain higher rent.

The tenant submitted that once the first lease for the rental unit expired, they became month to month renters. The landlord would harass the tenant on a daily basis regarding renewal letters, so the tenant provided renewal letters simply to avoid further harassment. On July 26, 2010 the tenant sent the landlord a letter stating that they would agree to a further one year lease if the landlord carried out the repairs and maintenance requested by the tenant. The landlord did not meet those terms, so the tenant refused to enter into a new agreement.

Analysis

Section 49(6) of the Act allows a landlord to end the tenancy if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to renovate the rental unit in such a manner that requires the rental unit to be vacant. If evidence shows that the landlord's purpose in ending the tenancy is for a reason other than the one stated on the notice to end tenancy, then that evidence raises a question as to whether the landlord had a dishonest purpose. If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intended to do what they said on the notice to end tenancy, and that the landlord is not acting dishonestly or with an ulterior motive for ending the tenancy.

In this case, I find that the evidence shows that the landlord did have an ulterior motive for ending the tenancy. The landlord's own evidence was that the landlord has had difficulty with getting the tenants to provide renewal letters, and the landlord believed that the tenants must either agree to renew the lease or the tenancy has ended. The tenants refused to enter into a new lease on October 25, 2011, and on October 29, 2011 the landlord served the tenant the notice to end tenancy. I accept the tenant's submission that the landlord does not intend in good faith to renovate the rental unit, but rather the landlord wishes to end the tenancy in order to re-rent the unit for a higher rent. The notice to end tenancy is therefore invalid, and I cancel the notice.

Conclusion

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

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 30, 2011.

Residential Tenancy Branch