



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNL, ERP, RP, OPL, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The Tenant applied on February 13, 2012 for:

1. More time to make an application to cancel a Notice to End Tenancy – Section 66;
2. An Order cancelling a Notice to End Tenancy – Section 46; and
3. An Order for the Landlord to make emergency or other repairs to the unit – Sections 32 and 49.

The Landlord applied on February 24, 2012 for:

1. An Order of Possession - Section 55;
2. An Order to recover the filing fee for this application - Section 72.

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

Preliminary Matter

The Tenant states that the Notice to end Tenancy for Landlord’s Use (the “Notice”) was received on January 31, 2012 and the Tenant’s application to dispute the Notice was made February 13, 2012. A period of 15 days is allowed for the Tenant to dispute the Notice. As the Tenant has filed the application to cancel the Notice within the time frame allowed, the claim for more time is not necessary. Accordingly, I dismiss this part of the Tenant’s application.

Issue(s) to be Decided

Is the Notice to End Tenancy valid?

Is the Landlord required to make repairs to the unit?

Is the Landlord entitled to an Order of Possession?

Background and Evidence

The tenancy began on February 1, 2004. Rent of \$911.65 is payable in advance on the first day of each month. Immediately prior to this tenancy, the Tenant lived in a different unit in the same building from November 5, 2000. On January 31, 2012, the Landlord personally served the Tenant with the Notice. The stated intention on the Notice is that the Landlord intends to convert the unit into use by a caretaker. The effective date of the Notice is March 31, 2012 however the date is marked as revised pursuant to the attached addendum and that addendum is a Mutual Agreement to End the tenancy (the "Mutual Agreement") on April 30, 2012. The Parties agree that this Mutual Agreement, signed January 31, 2012 was signed following the service of the Notice and was based on the Landlord's agreement to allow the Tenant to stay in the unit a month longer than as provided by the Notice.

The Tenant states that at the time of receiving the Notice and agreeing to sign the Mutual Agreement, the Tenant believed that the Landlord had good faith intentions but that after reflection, came to believe that the Landlord only wanted the Tenant out of the unit for being a problem tenant by asking for repairs, for refusing to pay an extra rental amount demanded by the Landlord for having a room-mate, and because the Tenant was a long term tenant with less rent payable than would otherwise be for new tenants. The Tenant provided a written submission that sets out the sequence of events leading up to the Notice and the reasons for doubt about the good faith intentions of the Landlord. In particular, the Tenant points to a conversation with the Landlord in October 2011 wherein the Landlord informs the Tenant that her unit would be considered for a caretaker as the Tenant may be flagging herself as a problem tenant for refusing to pay a \$100.00 per month rental increase. Further, the Tenant submits that following a call

on January 24, 2012 to the Landlord requesting a time line for repairs to the unit, the Landlord, without addressing the repairs, informed the Tenant that a caretaker is needed and that the Tenant's unit was the obvious choice for the caretaker.

The Tenant also states that the Landlord has previously used the "caretaker" reasons for trying to remove other tenants. The Tenant provided a notarized statement from a previous long term tenant that states that the Landlord approached this tenant in 2009 asking this tenant to volunteer to move out as it was time the building had a live in caretaker. This statement indicates that following the tenant's refusal, the relationship deteriorated, necessary repairs to the unit were not attended to and that by June 30, 2011 the tenant ended the tenancy with the Landlord's provision of a month's free rent. The statement indicates that no caretaker was brought into that unit or into the two other units that became vacant at the same time. The Tenant states that there is a high turnover of tenants in the building providing several optional units for the caretaker and that at the time of the Notice, a unit was being advertised as vacant.

The Landlord states that the building is old and needs constant repairs that are not being completed in a timely manner. The Landlord states that as a result there is more demand for the Landlord's time and that the Landlord's parenting responsibilities are limiting that available time. The Landlord states that a caretaker has been found, that this caretaker has pets and has requested a one bedroom corner unit facing the street (south view) on the top floor. The Landlord states that the top floor is particularly important as the caretaker does not wish to reside in a unit with noise that would be caused by living below another unit. The Landlord states that the caretaker chose the Tenant's unit as suitable for the caretaker's needs and that as the Landlord wishes to employ this person long term, they wish to provide him with the unit of his choice. The Landlord states that the caretaker has done repairs for the Landlord and that compensation has been worked out for repairs completed by this person to other buildings. It is noted that the Landlord did not provide corroborating evidence that negotiations to hire a caretaker for the current building took place in advance of the Notice or that it is the caretaker's choice of units that determined the Tenant's unit was

chosen for the reasons stated by the Landlord. The Landlord denies a high turnover of tenants and states that half of the existing tenants are long-term tenants, most of the units are bachelor units and that only eight units are one bedroom units. The Landlord states that the Tenant was offered an upgraded north facing basement unit as an option. The Landlord states that the Tenant has changed her mind about leaving the unit as the Tenant has discovered that similar units elsewhere are not available or are more expensive.

The Tenant states that her unit has another unit above her, the penthouse unit, and that the living space in this unit is directly above her living space. The Landlord agrees that the Tenant's unit and other units on the "top floor" are below the penthouse unit but that the tenant in this unit is a single person who is rarely home.

The Tenant states that the Landlord was notified in September or November 2011 and again in December 2011 and January 2012 that a leak started under the kitchen sink. The Tenant states that the Landlord was informed that heat in the unit cannot be raised and that this problem has been ongoing since the fall of 2011. The Tenant states that no repairs have been made to date. The Tenant also states that the toilet started leaking two weeks ago and that the Landlord was notified of this leak in the application materials. The Landlord states that while repairs would happily be made this cannot be done as nobody can be found to make these repairs and cost is a factor in finding someone.

Analysis

Section 49 of the Act provides that a landlord may end a tenancy if the Landlord intends in good faith to convert the unit for use by a caretaker. Where the good faith intention is called into question, the burden is on the landlord to establish the honest intention. Given the landlord's admission that repairs are not being made on a timely basis, I find that the Landlord has established a good faith intention to hire a caretaker. However, considering the doubt raised by the intention of the Landlord in relation to the Tenant's unit, accepting that other units have come available both before and at the same time

as the Notice was given to the Tenant, and considering that the Landlord did not provide corroborating evidence that the Tenant's unit was chosen by the caretaker for the reasons provided by the Landlord, or that the timing of such negotiations to hire the caretaker affected the choice of the caretaker, I find that the Landlord has not met the burden, on a balance of probabilities, of establishing a good faith intention that the Landlord had no other choice of units to offer the caretaker. I find therefore that the Notice is not valid and that the Tenant is entitled to a cancellation of the Notice. Given the notation of amendment to the effective date of the Notice and the agreed evidence of the Parties that the Mutual Agreement was intended to amend the effective date of the Notice, I find that the Mutual Agreement was not made in relation to the Tenant's desire to end the Tenancy and that this Mutual Agreement does not serve to maintain the end of the tenancy if the Notice is not found to be valid. As the Notice has been cancelled, I dismiss the Landlord's application for an Order of Possession and recovery of the filing fee.

Given the undisputed evidence that repairs are need to the unit, I find that the Tenant has established an entitlement to an order that the Landlord make repairs to the unit and I order the Landlord to make repairs to the unit in a timely manner and no later than the end of March 2012. It should be noted that although the Landlord states that a repair person cannot be found, I refer the Landlord to the evidence that the caretaker being hired for the building has been carrying out repairs to other buildings for the Landlord.

Conclusion

The Notice is cancelled and the tenancy continues. The Landlord is ordered to make repairs to the unit no later than March 31, 2012. 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: March 2, 2012.

Residential Tenancy Branch