



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC

Introduction

This hearing dealt with an application by the tenants to cancel a notice to end tenancy for landlord's use of property and for the landlord to comply with the Act.

Both parties participated in the conference call hearing.

Issue(s) to be Decided

Is the tenant entitled to any of the above under the Act.

Preliminary Issue to be Decided

File 787837 and file 787836 are identical claims filed by 'tenants in common'. As the matters being brought forward by the tenants in common are the same and relate to the same tenancy and the same landlord, the parties have agreed to hear both files concurrently.

Background and Evidence

This tenancy began May 1, 2008 with monthly rent of \$425.00 and the tenants paid a security deposit of \$212.50.

On February 4, 2012 the landlord served the tenants with a 2 Month Notice to End Tenancy for Landlord's Use of Property:

- The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse.

The tenant testified that the current landlord took possession of the rental property in 2010 and that in May 2010 and again in 2011 the landlord insisted that the tenants sign

a new tenancy agreement with different terms than that of the 2008 tenancy agreement. The tenant stated that they did not sign the new tenancy agreements and the 2008 tenancy agreement remains in place.

The tenant stated that in June 2010 the landlord demanded a new security deposit from the tenants and that because this had been a court ordered sale, advised the tenants that transfer of the original security deposit to the new owner was the tenant's responsibility. The tenants check with this office to verify if transfer of the security deposit was their responsibility and were advised that it was not and matters related to the security deposit should have been addressed in the sale of the property. The landlord stated that he has since stopped asking for a new security deposit from the tenants.

The tenant stated that there is a monetary claim forthcoming in relation to issues with the tenancy and that they had been advised to address the notice to end tenancy only in this hearing.

The tenant stated that she believes the landlord served the notice to end tenancy as he had advised the tenants that he did not want to deal with the issues of the family and abusive tenant who lives upstairs. The tenant stated that the landlord also has the property up for sale and the tenant does not believe that the landlord will be occupying the rental unit as he claims.

The landlord stated that the property had been up for sale but as of early February 2012 it has been taken off the market. The tenant responded by verifying during this hearing that she was able to find the property on a realty website and currently listed for sale.

The landlord maintained that he would be moving into the rental property and when the tenant questioned him about his personal residence, that landlord stated that the property 'may be sold in the not too distant future' and moving into the rental unit now would help him with the process of having a residence. The landlord acknowledged that at this time his personal residence is not up for sale.

Analysis

As clarified and agreed to at the start of the hearing, files 787837 and 787836 are identical claims filed by 'tenants in common' and the parties agreed to hear both files concurrently.

Residential Tenancy Policy Guideline **13. Rights and Responsibilities of Co-tenants** speaks to:

Tenants in Common

"Tenants in common" sharing the same premises or portion of premises may enter into separate tenancy agreements with a landlord. A tenant in common has the

same rights and obligations as an ordinary tenant with a separate tenancy, and is not responsible for debts or damages relating to the other tenancy.

Based on the documentary evidence and undisputed testimony of the parties, I find on a balance of probabilities that the landlord has not met the burden of proving that they have grounds to have the notice to end tenancy for landlord's use of property upheld.

Section 49 (5) of the Act is very clear on what requirements must be met when a landlord serves a tenant with a 2 month notice to end tenancy for landlord's use of property. In this instance the landlord claims that he will be occupying the rental unit himself. However when one considers that there have been issues with this tenancy that the landlord does not want to deal with combined with the fact that the landlord owns and lives in his own residence. It appears very improbable that the landlord would occupy this rental unit, which is a lower unit in a four-plex when he still resides in his private residence.

Consideration must also be given to the landlord's testimony where he stated that the rental property was no longer listed for sale when in fact it is and that his personal residence 'may be sold in the not too distant future' but is currently not up for sale.

Based on the above, I find that the landlord has not established that he does not have another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive for ending the tenancy. The landlord may at some time in the future require occupation of the rental property but at this time I do not believe that is the case.

Therefore the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property dated February 4, 2012 is hereby set aside with the result that the tenancy continues uninterrupted.

Residential Tenancy Policy Guideline 2. Good Faith Requirement when Ending a Tenancy speaks to:

If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy.

If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive for ending the tenancy.

In regards to the landlord not complying with the Act the tenant stated in this hearing that those matters will be dealt with under a new application.

Conclusion

I therefore allow the tenant's applications and set aside the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property dated February 4, 2012 with the result that the tenancy continues uninterrupted.

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 13, 2012

Residential Tenancy Branch