



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 the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the tenant, her agent, the landlord and legal counsel for the landlord.

At the outset of the hearing the tenant identified that she would like to maintain her tenancy even during any periods that she would be required to vacate the rental unit during the renovations. The landlord was not prepared to negotiate any such agreement during this hearing.

During the hearing, the landlord did not verbally request an order of possession should the tenant be unsuccessful in her Application.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property, pursuant to Section 49 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties confirmed the tenancy began in July 2005 and is currently a month to month tenancy with a current rent of \$682.00 due on the 1st of each month with a security deposit of \$300.00 paid.

The tenant submitted into evidence a copy of a 2 Month Notice to End Tenancy for Landlord's Use of Property dated April 18, 2012 with an effective vacancy date of June 30, 2012 citing the landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant. The tenant documented on her Application that she received the Notice on April 18, 2012.

The residential property consists of 64 units built in the early 1960's on a plot containing significant organic material distributed throughout the fill and as resulted in buildings

with compromised structures including exterior stairs and decks that are the only entrances to the rental units.

The parties agree the work is long overdue and is required. The parties also agree that, at least for some parts of the work, the rental units will be required to be vacant. The landlord has submitted applicable permits into evidence and the tenant provided no arguments regarding the adequacies of the permits. The tenant submits, however, the landlord is not acting in good faith.

The tenant asserts that because she has been paying rent and has accepted all rent increases throughout the tenancy that the landlord should have been making the necessary repairs throughout the tenancy and because the landlord has failed to do so to end tenancies now in order to complete these repairs would not be in good faith.

The tenant also submits that the landlord had originally informed tenants that they would not end tenancies in order to make repairs and had originally told local authorities they did not intend to end tenancies when they were getting permits the landlord has not be acting in good faith.

Analysis

Section 49 of the *Act* allows a landlord to end a tenancy by issuing a notice to end tenancy with an effective date not earlier than 2 months after the date the tenant receives the notice if the landlord has all the necessary approvals required by law, and intends in good faith, to renovate or repair the rental unit in a manner that requires the rental unit to be vacant.

I accept there is no dispute from the tenant that the renovations or repairs are required; that the permits are insufficient; or that the unit will, for a period of time, require vacant possession. As such, the only pertinent matter before me is whether or not the landlord “intends in good faith to renovate and repair the rental unit”.

Residential Policy Guideline #2 states:

Good faith is an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage.

A claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End the Tenancy. This might be documented through:

- A Notice to End Tenancy at another rental unit;
- An agreement for sale and the purchaser's written request for the seller to issue a Notice to End Tenancy; or
- A local government document allowing a change to the rental unit (e.g., building permit) and a contract for the work.

While I understand the tenant's testimony regarding aspects of the common usage of good faith, I find, in accordance with the policy guideline, the relevance of the term "good faith" is solely in regard to the landlord's intent to complete the repairs. I find the tenant has provided no evidence or testimony to dispute the landlord's honesty of intention.

Further, I find the landlord has provided sufficient evidence, and as agreed by the tenant, to establish the work required is necessary to maintain the integrity of the structures on the residential property. As such, I find there is no ulterior motive and the landlord is acting in good faith.

Conclusion

For the reasons note above, I find the 2 Month Notice to End Tenancy for Landlord's Use issued on April 18, 2012 to be effective. I dismiss the tenant's Application in its entirety.

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: May 22, 2012.

Residential Tenancy Branch