



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

dispute DECISION

Dispute Codes CNL, O, RR, ERP, RP

Introduction

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties and the witness the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties and the witness.

All testimony was taken under affirmation.

Issue(s) to be Decided

This is an application to cancel a notice to end tenancy that was given for landlord use, a request to reduce the rent for repairs, services, or facilities agreed upon but not provided, and a request for an order to make repairs to the unit.

First of all it is my decision that I will not deal with all the issues that the applicant has put on the application. For claims to be combined on an application they must related.

Not all the claims on this application are sufficiently related to the main issue to be dealt with together.

I therefore will deal with the request to cancel the two month notice to end tenancy, and I dismiss the remaining claims with liberty to re-apply.

Background and Evidence

On November 5, 2012 the landlord served the tenant with a two month notice to end tenancy for landlord use which states:

- “The rental unit will be occupied by the landlord or the landlord spouse or close family member of the landlord or the landlord spouse.”

The landlord testified that:

- She got divorced this year, and she was awarded ownership of the dispute property as part of the divorce settlement.
- She has been living in a friend's house for two years, however now that she's been awarded ownership of the dispute property she wants to move into her own home.
- The tenant has been fully aware of the fact that at some point she would be moving into the dispute property.

The tenant testified that:

- He believes this notice to end tenancy has been given in bad faith, because it was given one half hour after he had a one month notice to end tenancy set aside through the dispute resolution process.
- Although the landlord now denies saying it, the landlord told him that if he was successful in having the one month notice to end tenancy canceled she would be giving him a two month notice for landlord use.
- He thinks this is harassment and retaliation for having disputed the one month notice to end tenancy.
- He is therefore asking that this notice to end tenancy be canceled for having been given in bad faith.

In response to the tenant's testimony the landlord testified that:

- This notice to end tenancy was not given in retaliation.
- The one month notice to end tenancy was only given to the tenant because the landlord of the mobile home park informed her that she would have to give him notice to end tenancy.
- She fully intended to move into the rental unit at some point, however she waited until the previous dispute resolution hearing was over before giving the notice, as she saw little point in giving a second notice to end tenancy when one was already in dispute.

The landlords witness testified that:

- He is a friend of the landlord, and he has known for over two years that she wanted to move back into the rental unit as her permanent home.

- He knows for a fact that this notice was not given in retaliation.

Analysis

It is my finding that the applicant has not met the burden of proving that the notice to end tenancy was given in bad faith.

I agree that it does seem suspicious that the notice was given shortly after a previous one month notice to end tenancy was set aside, however I find the landlords explanation of why the notice was given at that time to be plausible.

The applicant claims that the landlord threatened to give a notice to end tenancy in retaliation if he won the previous dispute resolution hearing, however he has provided no evidence to support that claim.

Therefore it is my decision that I will not cancel a notice to end tenancy.

Conclusion

The application to cancel a notice to end tenancy is dismissed and, at the request of the landlord, I have issued an order of possession for 1:00 PM on January 31, 2013.

As stated previously, the remainder of the tenant's application is dismissed with leave to reapply.

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: December 12, 2012.

Residential Tenancy Branch