



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: OPL, FF
Tenant: CNL

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed seeking an Order of Possession and to recover the filing fee for this proceeding.

The Tenant filed to obtain an order to cancel the Notice to End Tenancy and for more time to make an application.

Service of the hearing documents by the Landlord to the Tenant were done by personal delivery on December 3, 2012 in accordance with section 89 of the Act.

Service of the hearing documents by the Tenant to the Landlord were done for the first hearing by registered mail on October 6, 2012, in accordance with section 89 of the Act.

This hearing is the result of a review application by the Landlord in which the Landlord was successful in being granted a new hearing. In the first hearing which was on November 7, 2012 the Landlord did not attend, which resulted in the Tenant being successful in receiving more time to make his application and in cancelling the Landlord's 2 Month Notice to End Tenancy for Landlord's Use of the property.

The Landlord was successful with the review application dated November 29, 2012 as the Landlord said they did not attend the hearing because they had forgot about the hearing due to a funeral in their family.

A new hearing date was set for January 8, 2013 at 2:00 p.m.

Issues to be Decided

Landlord:

1. Is the Landlord entitled to an Order of Possession?

Tenant:

1. Is the Tenant entitled to an order to cancel the Notice to End Tenancy?

Background and Evidence

This tenancy started approximately 3 years ago as a month to month tenancy. Rent is \$650.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$325.00 at the start of the tenancy.

The Landlord said they wish to make renovations to the unit starting March 2013 and therefore they issued the 2 Month Notice to End Tenancy for Landlord's Use of the Property. The Landlord continued to say the renovation will be to repair the floors and to do work in the bathrooms. The Landlord said they do not need a building permit to do the repairs.

The Landlord did not provide any evidence as to the extent of the repairs nor did the Landlord prove that the repairs required the Tenant to move out of the rental unit in order to make the repairs or renovations.

The Tenant said the Landlord does not have any permits to make the renovation and under the Act the Landlord is required to have permits if the tenant is being evicted for the Landlord to do repairs or renovation. The Tenant said he does not know what repairs or renovations are being planned by the Landlord.

The Tenant continued to say that he has looked for different accommodations, but at this time he has not found anything that he can move into. The Tenant said he wants to continue this tenancy.

The Landlord said she wants to end the tenancy so that she can start the renovations of the rental unit in March 2013. The Landlord said she would offer the Tenant 1 month rent free if he moved out by the end of January, 2013.

The Tenant declined the Landlord's offer. It should be noted the Landlord's offer is the same compensation as what is required to compensate a tenant when a 2 Month Notice to End Tenancy for Landlord's Use is issued.

Analysis

Section 49 (6) of the Act says a landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:

- (a) demolish the rental unit;
- (b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant;
- (c) convert the residential property to strata lots under the *Strata Property Act*;
- (d) convert the residential property into a not for profit housing cooperative under the *Cooperative Association Act*;
- (e) convert the rental unit for use by a caretaker, manager or superintendent of the residential property;
- (f) convert the rental unit to a non-residential use.

When a Notice to End Tenancy is issued by a landlord to a tenant it is the landlord's responsibility to prove the reasons for the eviction. In this situation the Landlord said they do not need any permits for the renovation, but they have not provided any evidence that permits are not required. This could have been done by requesting a letter from the municipal authorities. Consequently we do not know if permits are required or not.

In addition the Landlord did not submit any evidence to show what the renovations are and if the renovations required the Tenant to move out of the rental unit. The Landlord has not proven the renovation require the Tenant to move out of the unit while the renovation are being done. Consequently I find the Landlord has not established grounds to prove the reasons for the 2 Month Notice to End Tenancy for the Landlord's

Use of the Property are valid and as a result I dismiss the Landlord's application without leave to reapply. As well I cancel the 2 Month Notice to End Tenancy for Landlord's Use of the Property dated September 1, 2012 and I order the tenancy to continue as verbally agreed to.

With respect to the Tenant application I find the Tenant has established ground by showing the Landlord has no permits to substantiate the 2 Month Notice to End Tenancy for Landlord's Use of the Property dated September 1, 2012 to be successful. I find for the Tenant and I Order the 2 Month Notice to End Tenancy for Landlord's Use of the Property dated September 1, 2012 to be cancelled. As well I Order the tenancy to continue as verbally agreed to.

As the Landlord has been unsuccessful in this matter, I order the Landlord to bear the cost of the filing fee for the application of \$50.00 which she has already paid.

Conclusion

The 2 Month Notice to End Tenancy for Landlord's Use of the Property dated September 1, 2012 is cancelled and the tenancy is Order to continue as verbally agreed to.

The Landlord's application is dismissed without 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: January 08, 2013.

Residential Tenancy Branch

