



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Magsen Realty Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, FF

Introduction

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

1. An Order cancelling a Notice to End Tenancy –Section 49; and
2. An Order that the landlord comply with the Act – Section 62.

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

Issue(s) to be Decided

Is the Notice to End Tenancy valid?

Is the Tenant entitled to a cancellation of the Notice to End tenancy?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The following are the facts relevant to the determination of the application:

The tenancy started on May 1, 2003. On December 27, 2012 the Tenant received a 2 Month Notice to end Tenancy for Landlord’s use (the “Notice”). The effective date of the Notice is February 28, 2013. The reasons provided on the Notice are as follows:

1. The rental unit will be occupied by the landlord or the landlord’s spouse or a close family member of the landlord or the landlord’s spouse;

2. 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 unit to be vacant.

The Landlord's Agent (the "Agent") states that the Landlord's elderly mother and sister will be moving into the unit. The Landlord states that the elderly mother is experiencing health and mobility problems and the sister will care for the mother. The Landlord states that the mother currently lives in a basement suite in Vancouver and will move into the lower part of the unit that is at ground level while the sister will live in the upper level. The Landlord provided a letter from the mother's physician setting out the mother's health issues.

The Tenant states that she does not believe that a close family member of the Landlord will be moving in as the Landlord's sister has earlier told the Tenant that her husband's elderly family member who was in ill health would be moving from China. Alternatively, the Tenant states that she believes the Landlord intends to either sell the unit or to renovate and rent it out at a higher rental rate. The Tenant states that the Landlord has tried three times in the past year to end the tenancy for but did not have the permits. The Tenant states that this supports the Tenants belief that the Landlord has given this latest Notice in bad faith.

The Landlord states that he has no knowledge of the sisters' family in China and that the Landlord's mother has been living in Vancouver for over 30 years. The Landlord states that while they were unsuccessful with their past notices to end tenancy it was not due to bad faith but due to the procedural inexperience of the Landlord in relation to the Notices to end tenancy. The Landlord requests an Order of Possession.

Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, on a balance of probabilities, that the tenancy should end for the reason or

reasons indicated on the Notice and that at least one reason must constitute sufficient cause for the Notice to be valid.

Section 49 of the Act provides that a landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. This section defines “close family member” as

- the individual's father, mother, spouse or child, or
- the father, mother or child of that individual's spouse;

Given the evidence of the Landlord in relation to the Landlord's mother's health and long term residence in Vancouver, I find on a balance of probabilities that the Landlord intends in good faith to have a close family member occupy the unit. I do not find the Tenant's argument of bad faith on the basis of previous decisions to be persuasive and note that while the occupancy of the unit by a family member may be a new reason for this Notice, the reason of repairs has been given consistently. As one of the reasons noted on the Notice has been found to be sufficient cause to end the tenancy, I find the Notice to be valid and that the Tenant is not entitled to a cancellation of the Notice. The tenancy must end and the Tenant's application is therefore dismissed.

Section 55 of the Act provides that where a tenant's application to dispute a landlord's notice to end a tenancy is dismissed and the landlord makes an oral request for an order of possession, such an order must be granted. As I have dismissed the Tenant's application to cancel the Notice and as the Landlord requested an Order of Possession at the hearing, I find that the Landlord is entitled to an Order of Possession. Given the effective date of the Notice, I make this Order effective February 28, 2013.

Conclusion

The Tenant's application is dismissed.

I grant an Order of Possession to the Landlord effective February 28, 2013.

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: February 21, 2013

Residential Tenancy Branch

