



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MT, CNC, FF

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution, seeking an order to cancel a two month Notice to End Tenancy, for an order allowing her more time to make the Application, and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure, however, I refer to only the relevant facts and issues in this decision.

Preliminary Issue

The Tenant was served with a two month Notice to End Tenancy on or about November 29, 2012, indicating the Landlord intends to convert the rental unit for use by a caretaker or manager for the residential property (the "Notice"). On December 10, 2012, the Tenant received a letter from the manager of the building ("M.H.") where the rental unit is located informing her that the Notice had been rescinded at a recent meeting of the owners. I note that this Agent for the Landlord, M.H., explained he was attending the hearing in support of the Tenant.

Following this letter the Tenant received an email from another person holding themselves out as a representative of the Landlord ("R.H.") who informed the Tenant the Notice had not been rescinded and she should prepare to vacate. Despite this, at the outset of the hearing R.H. stated he has no objection to the Tenant being granted more time to make her Application.

As the Tenant received conflicting information from the Agents for the Landlord, and the Agents for the Landlord made no objection, I found the Tenant's request for more time to make this Application should be granted and I allowed the hearing to proceed.

Issue(s) to be Decided

Is the Notice valid or should it be cancelled?

Background and Evidence

One of the Agents for the Landlord (R.H.) testified that the Notice was issued because they had terminated the employment contract of the resident property manager and they needed the subject rental unit to move their new employee in. This Agent also testified that the new employee had not been hired. Agent R.H. further testified that the owners were losing money on a bedroom in the building.

In her evidence the Tenant supplied an email between two Agents for the Landlord. R.H. had sent M.H. an email on Sunday November 25, 2012, which states,

"[M.H.],

Here is the letter that I drafted for [the Tenant] which I will no longer be sending. Instead, I will force the conversion back to a two bedroom in the following fashion:

1. Option 1 – she rents out the extra bedroom - and if she can not then
2. Option 2 – I say we need [the subject rental unit] for manager's suite – given that it is a 1 bdrm suitable for manager – who no longer requires a three bedroom suite (she does not know that [third party] is living there, and if she does, we can say she has since moved in with her boyfriend.)
3. Option 3 – You and [third party] move into suite 202 regardless of what I tell her, and then we gut out 202, and rent it as a 2 bdrm.

The bottom line is – regardless of what we decide, the net conclusion is that we can not tolerate what is effectively an empty bedroom sitting idle."

[Reproduced as written.]

The Tenant also supplied an email from R.H. dated November 27, 2012, in which the Agent attempts to convince the Tenant she is, "... now occupying a two bedroom corner

suite less one of the bedrooms, which is currently an addition to suite 202, making 202 a three bedroom suite.”

One of the Agents for the Landlord, R.H., also provided lengthy testimony as to the structure of the arrangement for managing the residential building where the rental unit is occupied.

The other Agent, M.H., testified that R.H. is no longer the property manager and has retired, and in evidence provided a letter from the various owners of the building that supports this. There was also evidence that the residential property will be run by a management company beginning March 1, 2013.

There is also evidence that the owners of the building, which include M.H. and R.H., are having a dispute as to the sale of the building.

The Tenant testified that the confusion between the various Agents for the Landlord as to who has the authority to manage the property and give or rescind the Notice has caused her stress. She testified that until recently M.H. had always been the Agent for the Landlord she dealt with, and she had not dealt with R.H. until the Notice was issued.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find and order that the Notice should be cancelled, and I order that it is of no force or effect.

I find the Notice was not given in good faith.

The Landlord had no evidence that the current manager's employment had been terminated or that this person had been evicted. There was also insufficient evidence as to why the rental unit occupied by the current property manager could not be occupied by a new property manager when and if they are hired.

I further find that the emails of November 25 and 27, 2012, indicate that the real reason the Tenant was issued the Notice was because the Agent for the Landlord, R.H., felt the Landlord was suffering a loss of rent for one bedroom in the building. The tone of the November 25, 2012, email also indicates a willingness of the Agent R.H. to evict the Tenant for ulterior purposes, which brings into the question the honesty of intent behind the Notice.

For these reasons **I find the Notice should be cancelled.** This tenancy will continue until ended in accordance with the Act.

It is clear that the owners of this building, as well as the Agents of the Landlord, are embroiled in an internal, company dispute - over which the Act has no jurisdiction. However, I caution the Landlord and the Agents that their lack of ability to determine who should be managing this building should not cause the Tenant to suffer a loss of quiet enjoyment of the rental unit, something which the Act does have jurisdiction over.

To this end, I cautioned the parties during the hearing that any further attempts to end the tenancy of this Tenant should be done with great caution, complete honesty, and in good faith, in accordance with the Act. Otherwise the Tenant might request an order for monetary compensation for lack of quiet enjoyment or for aggravated damages for harassment.

The Tenant has been successful in having the Notice cancelled and I allow her the filing fee for the Application. **The Tenant may deduct \$50.00 from one month of rent.**

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: February 12, 2013

Residential Tenancy Branch

