



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

This hearing was convened in response to an application filed by the tenant seeking to cancel a Notice to End Tenancy given for the Landlord's use of property.

Both parties appeared at the hearing and gave evidence under oath.

Issue(s) to be Decided

Has the landlord met the burden of proving she has cause to end this tenancy?

Background and Evidence

The landlord issued a Notice to End Tenancy for Landlord's Use. In that Notice the landlord stated that "my cousin will be occupying the room on May 1, 2013". However, at the hearing of this matter the landlord's daughter testified that her mother will be looking after her children in the home while the daughter works and the rental unit area is needed as extra space for the children. The landlord's daughter confirmed that she would not be living in the rental unit. The landlord's daughter argued that this is her mother's home and she should be entitled to take the space back.

The tenant stated that the landlord had said her cousin was moving in and this is clearly not the case.

Analysis and Findings

The Residential Tenancy Act sets out the means by which a tenancy may end. In this case, the landlord wishes to end the tenancy for landlord's use this ground is found under Section 49(3) which states:

49 (1) In this section:

"Close family member" means, in relation to an individual,

- (a) The individual's father, mother, spouse or child, or
- (b) The father, mother or child of that individual's spouse;

(3) 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.

First, the Notice to End Tenancy is issued on a form from August 2003 which is not the proper form for the Notice. Further, even if the Notice was accepted in its form, the landlord has issued a notice stating that "...my cousin..." would be occupying the rental unit. Yet a cousin is not a "close family member" as defined under the Act. Finally, when the landlord appeared at the hearing the evidence was that no family member, as defined under the Act, actually intended to occupy the rental unit at all.

Based on this evidence I find that it is reasonable and probably that the landlord did not issue the Notice in good faith. I will therefore allow the tenant's application. The Notice to End Tenancy issued on February 1, 2013 is cancelled. The effect of this decision is that this tenancy shall continue as though that Notice had not been issued.

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 28, 2013

Residential Tenancy Branch

