



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The tenant confirmed that the landlord handed him the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) on February 6, 2013. The landlord confirmed that the tenant handed him a copy of the tenant's dispute resolution hearing package on February 12, 2013. I am satisfied that the above documents and the parties' written evidence packages were served to one another in accordance with the *Act*.

At the hearing, the landlord requested the issuance of an Order of Possession if the tenant's application to cancel the 2 Month Notice were dismissed.

Issues(s) to be Decided

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Is the tenant entitled to recover the filing fee for this application from the tenant?

Background and Evidence

While I have turned my mind to all the documentary evidence and the sworn testimony of the parties and the witness, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the tenant's application and my findings are set out below.

The tenant testified that he moved into his one-bedroom rental unit in this rental building on or about September 2000. The landlord did not dispute this sworn testimony, as the landlord confirmed that he only purchased this rental property and took possession of it in mid-December 2012. Monthly rent is currently set at \$750.00, payable in advance on the first of each month. The landlord did not dispute the tenant's testimony that he paid a \$300.00 security deposit on or about September 2000.

The landlord's 2 Month Notice, entered into written evidence by the landlord, identified the following reason for seeking an end to this tenancy:

- *The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse...*

In the 2 Month Notice, the landlord requested vacant possession by April 30, 2013.

The landlord gave written evidence and sworn testimony that he needed the tenant's rental unit to house his adult daughter and her two children. He testified that she is a single parent with children aged four and five living with her. At present, the landlord's daughter lives in a two bedroom rental unit in this rental building with her children. The landlord gave evidence that without the ability to obtain income from two basement rental units he created in this building, he is not receiving sufficient rental income from this building. He confirmed that he has been unable to obtain bylaw approval to legalize the two basement rental units. He submitted that he needs the extra income from the two bedroom unit currently occupied by his daughter, thus requiring her to move into the tenant's less expensive rental unit. He testified that the tenant is not paying enough rent and that he can receive much more for the two bedroom rental unit where his daughter has been residing with her children. In his written evidence, the landlord stated "he was simply under the understanding that the proposed new rent for the 2-bedroom suite was well above (the tenant's) means at an estimated \$1100.00/month."

The tenant disputed the landlord's sincerity in claiming that he needed the tenant's rental unit for his daughter and her children. He testified that his rental unit is small, with a bedroom he estimated at 10 feet by 10 feet or 8 feet by 12 feet. He said that it would be unsuitable for a parent and two children to live in his rental unit. He asserted that the real reason that the landlord was seeking his rental unit was to obtain more rent from the rental property. He claimed that he was targeted for eviction because the landlord suspects that he contacted the municipality to report the landlord's illegal conversion of the basement area to rental suites, in contravention of the municipal by-laws.

The tenant's witness lives in the rental unit above the tenant. The landlord did not dispute the witnesses' sworn testimony that her rental unit is very similarly sized if not exactly identical to the tenant's rental unit. She estimated that her bedroom is approximately 10 feet by 12 feet. She gave undisputed testimony that she considered the tenant's rental unit perhaps suitable for two adults and a baby, but said that it could not properly accommodate one adult and two children.

The landlord testified that the tenant's rental unit is 640 square feet in total, which he said would be adequate for his daughter and her two children. He estimated the size of the bedroom at 14 feet by 20 feet.

Neither party provided a floor plan, diagrams, sketches or photographs of the tenant's rental unit. Faced with very wide differences in their estimates of the size of the tenant's sole bedroom, the tenant's witness offered to measure the tenant's bedroom with a measuring tape while the teleconference proceeded. Shortly thereafter, the tenant's witness returned and gave undisputed sworn testimony that the tenant's sole bedroom has dimensions of 12.5 feet by 10 feet.

Analysis

Section 49 of the *Act* allows a landlord to end a tenancy when the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. The "good faith" requirement imposes a two part test. First, the landlord must truly intend to use the premises for the purposes stated on the notice to end the tenancy. Second, the landlord must not have a dishonest or ulterior motive as the primary motive for seeking to have the tenant vacate the residential premises. If the "good faith" intent of the landlord is called into question, the burden is on the landlord to establish that he truly intends to do what he has indicated on the Notice to End Tenancy, and that he is not acting dishonestly or with an ulterior motive as his primary motive.

In this case, the landlord has asked me to accept that he plans to move his daughter and her two children from a two bedroom rental unit to the tenant's one bedroom rental unit. I accept the witnesses' sworn testimony that the actual size of the sole bedroom in the tenant's rental unit, confirmed by her measuring the bedroom during the hearing, is 12.5 feet by 10 feet. This varies considerably from the landlord's estimate that the bedroom is 14 feet by 20 feet. Other than the landlord's sworn testimony and his written evidence, the landlord has not submitted anything from his daughter to confirm that she is even aware of let alone actually plans to relocate her young family from her two bedroom rental unit to the tenant's one bedroom rental unit. Based on the evidence before me and on a balance of probabilities, I find it highly unlikely that the landlord is

acting in good faith in claiming that he intends to move his daughter and her children aged four and five into the tenant's one bedroom rental unit.

I also find that the landlord has been frank and candid in his explanation that the reason for requiring the tenant's rental unit is so that he can obtain more rent from the two bedroom rental unit where his daughter is currently residing. I find merit in the tenant's observation that he should not bear the brunt of any miscalculations that the landlord may have made in assuming that he could place tenants in an illegal basement suite in this rental building the landlord purchased in December 2012. Similarly, the landlord's need to obtain more income from his daughter's two bedroom rental unit has little bearing on whether a mother and two children could reasonably be expected to reside in the tenant's one bedroom rental unit. Rather, I find the landlord's issuance of the 2 Month Notice is designed to obtain more rental income from this property, rather than a genuine need to find suitable accommodation for his daughter and her young family. There may also be merit to the tenant's claim that the landlord has ulterior motives in seeking an end to this tenancy, either for the alleged reporting of the landlord's illegal basement suites to the municipality or to obtain more rent from a new tenant if the landlord is successful in evicting this long-time tenant.

For the reasons outlined above, I find that the landlord has failed to demonstrate that he intends in good faith to occupy the tenant's rental unit for an immediate family member. I allow the tenant's application to cancel the landlord's 2 Month Notice. As the tenant's application has been allowed, there is no need to consider the landlord's oral request for an Order of Possession.

Conclusion

I allow the tenant's application to cancel the 2 Month Notice with the effect that this tenancy continues. As the tenant has been successful in this application, I allow the tenant to recover his \$50.00 filing fee from the landlord. To accomplish this, I order the tenant to reduce his next scheduled monthly rent payment by \$50.00. 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: March 07, 2013

