



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

The tenant has applied for an Order pursuant to section 49(8) of the Residential Tenancy Act to set aside a Notice of End a Residential Tenancy dated April 8, 2013 setting the end of the tenancy for July 1, 2013 and pursuant to section 46 to cancel a 10 day Notice to End the Tenancy for non-payment of rent dated April 13, 2013. The landlord conceded that the 10 Day Notice to End the Tenancy dated April 13, 2013 had been cancelled as the tenant had paid the outstanding rent on time. A hearing was conducted in the presence of all parties. Service of the Application was admitted.

Issues(s) to be Decided

1. Is the landlord in good faith in his intention as to the reason for issuing the Notice to End the Tenancy?
2. Is the landlord entitled to an Order for Possession?

Background and Evidence

At the outset it became apparent that the landlord checked off the incorrect ground for ending the tenancy however the tenant admitted that he knew the reason was as the landlord's daughter intended to move in. The application was therefore amended without objection, to reflect that that the reason was *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*. The landlord testified that his daughter who was travelling decided to move back to the city and needed a place to live after getting married this summer. The landlord testified that his

daughter intended to move into the unit on August 1, 2013. The landlord asked for an Order for Possession effective July 31, 2013.

The tenant testified he was in bad health and need of financial support. He had applied for welfare and disability as was waiting for financial assistance and to get the medical attention he needed. He testified that the landlord knew of his condition at the commencement of the tenancy and therefore it would be a hardship if the landlord ended the tenancy at this time. The tenant further testified that the landlord had been equivocal to him in his explanation as when or if his daughter would actually move in.

The landlord replied that he was originally unclear of the date his daughter would return but now he was certain it would be on August 1, 2013. He further testified that he was not aware of the tenant's medical/financial situation at the commencement of the tenancy but was sympathetic.

Analysis

The landlord relies upon section 49(3) which states

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.

Section 49 of the Act requires that the landlord be in good faith in his intention to occupy the rental unit. Section 2 of The Policy Guidelines of the Residential Tenancy Branch provides:

If the "good faith" intent of the landlord is called into question, the burden is on the landlord to establish that he/she truly intends to do what the landlord indicates on the Notice to End, and that he/she is not acting dishonestly or with an ulterior motive for ending the tenancy as the landlord's primary motive. For example, the landlord may intend to occupy or convert the premises as stated on the notice to end. That intention may, however, be motivated by dishonest or undisclosed purposes. If the primary motive for the landlord ending the tenancy is to retaliate against the tenant, then the landlord does not have a "good faith" intent.

In this application once the tenant calls into question the landlord's good faith the landlord must establish that he does not have an ulterior motive for issuing the Notice. I find that the landlord's evidence was given in a straightforward manner and without any

embellishment. I accept the landlord's explanation as credible. Although the tenant's personal situation is very compelling I find that the landlord did not have bad faith as to the purpose of issuing his Notice and accordingly I have dismissed the application to cancel the Notice to End the Tenancy. Section 55(1)(a) provides that the arbitrator must grant an order of possession of the rental unit if the landlord makes an oral request for an order of possession at a hearing where an arbitrator has dismissed the tenant's application and has upheld the Notice. The landlord has made this request at the hearing. As a result I granted the landlord an Order for Possession.

Conclusion

I have granted the landlord an Order for Possession effective on July 31, 2013 at 1:00 PM. The tenant must be served with this Decision and Order. I have dismissed the tenant's application(s). There will not be any recovery of the filing fee.

Dated: May 21, 2013

Residential Tenancy Branch

