



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants to cancel a two month notice to end tenancy issued on April 7, 2013.

Both parties appeared, gave 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 at the hearing.

The tenants have applied to cancel a two month notice to ending tenancy for landlord's use of property. In a case where a tenant has applied to cancel a notice Residential Tenancy Branch Rules of Procedure require the landlords to provide their evidence and submission first, as the landlords have the burden of proving that the notice was issued for the reasons given on the Notice.

Issue(s) to be Decided

Should the two month notice to end tenancy issued on April 7, 2013, be cancelled?

Background and Evidence

The tenancy began in December 1, 2012. Rent in the amount of \$1,200.00 was payable on the first of each month. A security deposit of \$650.00 was paid by the tenants.

In this case, neither party has submitted into evidence a copy of the 2 month notice to end tenancy to end tenancy for landlord's use of property (the notice). The parties agreed the notice was issued on April 7, 2013, with an effective vacancy date of June 30, 2013. The reason stated in the notice was:

The rental unit will be occupied by the landlord or the landlords' spouse or a close family member of the landlord or the landlords' spouse.

The agent for the landlords submits that the landlords purchased the residence in 1978 and lived in the residence raising their children until 2009. The agent stated during the year of 2009, the owners her parents moved from the home to live with her brother and help with the children.

The agent for the landlords submits that recently, her brother and father had a falling out and that her father was asked to leave her brother's home. The agent stated that currently her father is living with one of his other children, however, that is only temporary as he had no other place to go. The agent stated the landlord (her father) needs to return to the home where the tenants are currently residing as he is on a fixed pension and he cannot afford to live elsewhere.

The agent for the landlords submits that the landlords' family is under considerable stress and in a major conflict between themselves and they cannot consider any extension of the effective vacancy date of the notice.

The tenants submit in March 2013, they were told by a real estate agent that the landlords' wanted to sell the property. The tenant stated that the real estate agent refused to provide their name or a business card. The tenants stated they are suspicious of the landlords' motive.

The agent for the landlords denied that the landlords have any intent to sell the property and have no ulterior motive or any reason to be deceitful. The agent stated that the landlords have been approached on several occasion over the years to sell the home as it is in a desirable area, but those offers have always been declined.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

When a tenant has filed to cancel a notice and calls into question the "good faith" requirement, the onus lies on the landlord to prove that the notice was issued with an honest intention, and no ulterior motive.

In this case, the evidence of the landlords' agent was, the landlords resided in the residence from 1978 to 2009. The reason they moved from the residence was to live with another family member and help raise the children.

The evidence of the landlords' agent was recently her father, the landlord had a falling out with his son and he was required to leave the home where he has been residing since leaving his home in 2009. Since leaving his sons home the landlord has been living with one of his other children, and that is only on a temporary basis. The evidence was the landlord is on a fixed income and requires to moving back into the residence where he resided from 1978 to 2009.

The evidence of the tenants was that they allege the landlords are planning to sell the property. However, that was unsubstantiated by the tenants. The landlords' agent denied there is any intent to sell the property, but did admit they have been approached over the years by unsolicited real estate agents to sell the property as the area is considered to be desirable and these offers have been declined.

I accept the evidence of the landlords' agent that the landlords truly intended to be use premises as stated on the notice.

I also accept the agent's argument that the landlords do not have any reason to be deceitful or have any other ulterior motive.

Given the above, I find the landlords issued the 2 month notice for the reasons stated in the notice, Therefore, I uphold the notice as is it is valid notice under the Act.

Therefore, I dismiss the tenants' application to cancel the notice to end tenancy issued on April 7, 2013. The tenancy will end in accordance with the Act on June 30, 2013, at 1:00 p.m.

The tenants are entitled to receive compensation under section 51 of the Act.

As the tenants were not successful with their application the tenants are not entitled to recover the cost of filing the application from the landlords.

Conclusion

The tenants' application to cancel the two month notice to end tenancy issued on April 7, 2013, is dismissed. The tenancy will legally end on June 30, 2013, at 1:00pm.

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: May 09, 2013

Residential Tenancy Branch