



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF

Introduction

This hearing dealt with the tenant's application for dispute resolution, seeking to cancel a notice to end tenancy issued by the landlord for the landlord's use of the property. The tenant also applied for the recovery of the filing fee.

Both parties appeared, gave 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. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

During the hearing the landlord requested for an order of possession in the event that the tenant's application was unsuccessful.

Issues(s) to be Decided

Has the landlord validly issued the notice to end tenancy and does the landlord intend, in good faith, to have a close member of his family move into the rental suite?

Background and Evidence

The tenancy started on July 01, 2012 for a fixed term of four months ending in December 2012. The monthly rent was \$1,700.00. The tenant paid a security deposit of \$850.00. The tenancy was to continue on a month to month basis at the end of the fixed term.

In December 2012, the landlord wrote out a tenancy agreement for a second fixed term tenancy ending March 31, 2013. The tenancy agreement clearly states that this tenancy would continue on as a month to month tenancy at the end of the fixed term. The rent was amended to \$1,600.00. The landlord stated that he had sent this agreement to the tenant and was waiting for her to return a signed copy to him.

On April 17, 2013, the landlord sent an email to the tenant informing her that he had entered into an agreement to rent the unit to a new tenant starting July 01, 2013. He informed the tenant that her tenancy would end on June 30, 2013. The landlord followed up with a visit to the tenant to discuss the end of tenancy. The tenant stated that the landlord did not mention the health of his father or the possibility of his father occupying the rental unit.

The tenant stated that she was looking to purchase a home and after she received this email she intensified her search. She found a property and put in an offer. The deal did not go through. The tenant stated that she actively continued to look for properties but was not having much success.

On May 24, 2013, the tenant received another email from the landlord asking about her search to purchase a property. The tenant replied giving the landlord an update on her efforts to find a property which included visiting open houses and posting an advertisement in the local paper.

Shortly after the above mentioned email exchange between the two parties, the tenant received a notice to end tenancy for landlord's use of property. The notice is dated May 22, 2013. The reason for the notice is that rental unit will be occupied by the landlord or a close family member. The tenant stated that she only found out about the landlord's intentions when she received the evidence package. She stated that the landlord's father has undergone knee surgery which would make it difficult for him to use the stairs in the rental unit. The kitchen and master bedroom are located upstairs.

The landlord filed a copy of his father's medical records indicating that the knee surgery took place on February 22, 2013. The landlord served the first notice to end tenancy by email almost two months after the surgery, on April 17, 2013 citing the new rental as the reason for ending the tenancy. During the hearing, the landlord stated that he had not signed a lease with a family for a tenancy starting July 01, 2013 and the statement in his email regarding this alleged new rental was not correct. The reasons for wanting to end the tenancy at that time were to use the property for vacation rentals.

The landlord stated that since then, his intentions have changed due to the health needs of his father. He stated that his father has to travel a considerable distance to see his specialist and by moving into the rental unit, he would be closer to the specialist's office. The landlord's parents currently live in their own home. The landlord also filed a letter from his father who states that his surgery took place in March 2013 and that he has suffered from rheumatoid arthritis for the past ten years.

The landlord's father also adds that he will benefit by the move as this will eliminate the long distance that he has to travel from his current residence, to the specialist's office.

During the hearing, the tenant stated that she intended to move and was making consistent efforts to find a property to move to. She requested the landlord to change the effective date of the notice to September 30, 2013. The landlord refused to do so stating that he would have to consult with his father.

The tenant has alleged that the landlord is issuing the notice in bad faith and wants to rent the unit out as a vacation rental which would be profitable during summer.

Analysis

Based on the documentary evidence and the oral testimony of both parties, I find as follows:

1. The landlord served the initial notice to end tenancy by email on April 17, 2013, in which he stated that he had entered into a tenancy agreement with a new tenant starting July 01, 2013.
2. The landlord offered contradictory testimony during the hearing when he stated that this was not correct and that he had not found a tenant for July 01, 2013. He stated that at that time his true plans were to rent the unit as a vacation rental.
3. The landlord confirms in his statement that the rental unit is a vacation rental and is furnished accordingly.
4. The landlord wrote out a notice to end tenancy on May 22, 2013, but did not mention it to the tenant in his email dated May 24, 2013.
5. The tenant pointed out that moving to a home with a staircase and with the kitchen and master bedroom on the top floor would not be helpful to a person who has knee problems and has undergone knee surgery.
6. The landlord's father stated that his surgery had taken place in March while the landlord stated that it had taken place in February.
7. In his evidence, the landlord states that since the beginning of this year two significant events took place to affect his father's health. However, the landlord's reason for ending the tenancy did not have anything to do with his father's health until after the notice dated April 17, 2013 did not pan out as planned.
8. The landlord was not at all flexible with the end date of tenancy. Earlier he had mentioned that the high season for vacation rentals was summer. The tenant offered to move out at the end of summer in September which is two months later. I find that the number of visits to the specialist would not likely be significant between August 01, 2013 and the end of September.

9. If proximity to the specialist's office is the only reason for the end of tenancy, then it is reasonable to expect that the landlord would have considered the tenant's request and would have been flexible with the end date of tenancy.
10. Overall in summary I find that the landlord served the initial notice stating he had entered into a tenancy agreement with a new tenant, then changed it to intending to use the property as a vacation rental and finally changed it to wanting to accommodate his father in a location closer to his specialist.

When the tenant alleges bad faith on the part of the landlord, the landlord has an onus to prove he is acting in good faith. Based on the evidence in front of me and for the reasons listed above, I find that on a balance of probabilities, it is more likely than not that the landlord did not act in good faith when he served the tenant with the notice to end tenancy for landlord's use of property. I further find that that on a balance of probabilities, it is more likely than not that the landlord wants to use the rental unit as a vacation rental.

Therefore I set aside the notice to end tenancy. The tenancy will continue on the terms of the tenancy agreement.

Since the tenant has proven her case, she may retain \$50.00 from a future rent towards the recovery of the filing fee.

Conclusion

The notice to end tenancy is set aside and the tenancy will continue as per the terms of the tenancy agreement. The tenant may make a onetime deduction of \$50.00 from a future rent.

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: July 11, 2013

Residential Tenancy Branch

