



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 an Application for Dispute Resolution by the tenant to cancel a Two Month Notice to End Tenancy for the Landlords Use of the property.

The tenant served the landlords by registered mail on July 04, 2013 with a copy of the Application and Notice of Hearing. I find that the landlords were properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties appeared, gave sworn testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Should the Two Month Notice to End Tenancy for the landlords Use of the Property be cancelled?

Background and Evidence

The parties agree that this tenancy started on October 01, 2012. This is a month to month tenancy and the tenant pays rent of \$950.00 per month which is due on the 1st of each month.

The landlords testify that the tenant was served a One Month Notice to End Tenancy in May, 2013 after receiving a report from the City concerning the rental suite. This Notice indicated that the tenancy must end in order to comply with a government order. It was determined at the previous hearing that this was not the appropriate Notice to serve as the City had not ordered the landlords to end the tenancy but rather to apply for a building permit to legitimize the suite or remove the kitchen to decommission the suite. The One Month Notice was then set aside. The landlords testify that as they cannot afford to do the necessary building work to legitimize the suite and the tenant cannot live in the suite without kitchen facilities without penalty to the landlords; the landlords have decided to incorporate the suite back into their family home and use the space for one of their children and as an office.

The landlords testify that due to this they then issued the tenant with the Two Month Notice to End Tenancy for landlords' use of the property. The landlords orally request that the Two Month Notice is upheld and seek an Order of Possession to take affect at the end of August, 3013.

The tenant testifies that she has concerns about being issued with this Two Month Notice and questions the landlord's good faith in issuing this Notice. The tenant testifies that the landlords went to the City about the rental suite and were told as it is an illegal suite the landlords must either apply to make the suite legal or decommission the suite. As the landlords do not want to make the suite legal they have now issued this Two Month Notice to the tenant.

The tenant testifies that four or five years ago the tenant also viewed the suite for rental but as it did not have a stove or fridge the tenant did not rent the suite at that time. However when the suite was advertised again in 2012, the tenant viewed it and it did have these appliances. The tenant testifies that therefore the landlords would have known that the suite was an illegal suite when they put in the appliances. The tenant states that because of this the tenant and her children are going to be without a home. The tenant seeks to have the Notice set aside.

The landlord testifies that when they purchased the property the suite was already in place. The landlords testify that the property disclosure statement states that the premises do not contain unauthorised accommodation (a copy of this disclosure statement has been provided in evidence). The landlords testify that due to this they were not aware the basement suite was not a legal suite. The landlords testify that when they purchased the property the suite did not have a fridge or stove however the landlords did put these appliances in the unit as soon as they could afford them. The question of the suite not being a legal suite was raised by the tenant during a conversation with the male landlord. The landlords' testify that they then went to the city to confirm that the suite was legal and found out that in fact it was not a legal suite.

The tenant disputes that she raised the question of the legality of the suite with the male landlord. The tenant testifies that the conversation they had at that time was to do with the lack of hot water and heating.

Analysis

I have carefully reviewed and considered all the evidence before me including the verbal testimony of both parties. I find the landlords have provided sufficient evidence to that the tenant was served with the Two Month Notice. I am satisfied from the evidence and testimony before me that the landlords will occupy the suite and find that their intention to incorporate the suite into their family home is an honest intention motivated by the landlords desire to comply with the City and their inability to afford to do any renovations to make the suite a legal suite.

While I sympathise with the position this has placed the tenant in, the tenant has not shown that the landlords good faith is in question and the landlords are within their legal rights to issue the Two Month Notice to the tenant and use the suite for their own purpose. The tenant's application is therefore dismissed and the Two Month Notice remains in force and effect.

As the landlords have orally requested an Order of Possession at the hearing and the tenants application to set aside the Notice has been dismissed; I find the landlords are entitled to an Order of Possession effective at the end of August, 2013.

Conclusion

The tenants' application is dismissed without leave to reapply.

I HEREBY ISSUE an Order of Possession in favour of the landlords effective on August 31, 2013. This order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that Court.

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: August 08, 2013

Residential Tenancy Branch

