



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Century 21 Prudential Estates (RMD)
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL

Introduction

This hearing dealt with an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) by the tenant to cancel a two month notice to end tenancy for landlord’s use of property.

The tenant and an agent for the landlord (the “agent”) attended the hearing. The parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me. Both parties confirmed that they did not have any witnesses to present at the hearing.

The agent testified that the landlord did not submit evidence in response to the tenant’s application.

Preliminary and Procedural Matters

At the outset of the hearing, the tenant requested to have the hearing adjourned to provide time for the tenant to retain legal counsel. The agent did not agree to the tenant’s request for an adjournment. The tenant’s request was denied as I find that there would be a greater prejudice to the landlord to adjourn this matter as this matter relates to a notice to end tenancy that contains an effective vacancy date that is less than two weeks from the date of this hearing. As a result of the above, the hearing proceeded with the tenant and the agent for the landlord.

Issue to be Decided

- Should the two month notice to end tenancy for landlord’s use of property be cancelled?

Background and Evidence

The parties agreed that a verbal tenancy agreement began on or about December 1, 1999, and that monthly rent in the amount of \$500.00 is due on the first day of each month. Both parties confirmed that the tenant did not pay a security deposit at the start of the tenancy. The parties agreed that monthly rent of \$500.00 has not increased since the start of the tenancy.

The parties agreed that the landlord served the tenant with a 2 Month Notice to End a Tenancy for Landlord's Use of Property (the "2 Month Notice") dated July 29, 2013, via personal service on the tenant on July 29, 2013. The tenant testified that he disputed the 2 Month Notice on August 12, 2013. The effective vacancy date of the 2 Month Notice is September 30, 2013.

The 2 Month Notice states the cause as "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." The agent stated that he did not submit any evidence in support of the 2 Month Notice. The agent testified that the owner of the home, FN, is currently living in the top floor of the home and that it is the intention of the landlord to occupy the entire home, including the main floor where the tenant currently resides. The tenant testified that he lives on the main floor of the home and that the landlord does not use the tenant's kitchen or bathroom as the landlord lives in a separate suite upstairs in the home. The tenant disputed that the owner of the home intends to occupy the main level of the home.

Analysis

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

The 2 Month Notice dated July 29, 2013 and served personally on the same date, July 29, 2013, has an effective vacancy date of September 30, 2013. The tenant disputed the 2 Month Notice on August 12, 2013 which is within the fifteen day timeline provided for under section 49 of the *Act* to dispute a 2 Month Notice. When a tenant disputes a Notice, the onus of proof reverts to the landlord to prove that the Notice is valid and should be upheld. If the landlord fails to prove the Notice is valid, the Notice will be cancelled.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the

burden of proof has not met the onus to prove their claim and the claim fails. In addition, when a tenant has filed to cancel a 2 Month Notice for Landlord's Use of Property and calls into question the "good faith" requirement, the onus lies on the landlord to prove that the 2 Month Notice was issued with an honest intention, with no ulterior motive to end the tenancy.

The agent confirmed that he did not have any documentary evidence, witnesses or other evidence to support that the owner of the home intends on occupying the entire home with the exception of his oral testimony that the owner is currently living in the home upstairs. The tenant disputed the agent's testimony by stating that although the owner is living upstairs in a separate suite, he does not believe that the landlord intends on occupying the entire home. There is no dispute that the parties agree that monthly rent has been \$500.00 per month since the start of the tenancy on or about December 1, 1999, which is approximately fourteen years ago.

I find the landlord provided insufficient evidence to prove that the owner of the property intends to occupy the entire home. At the very least, I would have expected the agent to have called the owner of the property (the "owner") as a witness so that the owner could provide testimony and be cross-examined during the hearing, or have submitted an affidavit from the owner swearing what his intentions were for the rental unit. The tenant testified that he did not believe the landlord would be occupying the entire home which is an equally probable version of events as the agent's testimony described.

As a result of the above, and without further evidence to prove the contrary, the party with the burden of proof has not met the onus to prove their claim and the claim fails. In the matter before me, the burden of proof is on the landlord to prove the 2 Month Notice is valid and was issued in good faith. Given the above, I am unable to find that the 2 Month Notice was issued in good faith. Without making a determination on this issue, it may be just as likely than not that the reason for the 2 Month Notice being issued was due to the tenant's rent not being increased for fourteen years and that the landlord is attempting to end the tenancy to increase the rent for a new renter. Based on the above, I cancel the 2 Month Notice due to insufficient evidence that the 2 Month Notice was issued in good faith. I order the tenancy to continue until ended in accordance with the *Act*.

Conclusion

The 2 Month Notice issued by the landlord is cancelled.

I order the tenancy to continue until ended in accordance with the *Act*.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: September 18, 2013

Residential Tenancy Branch

