



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 applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*.

The landlord applied for an order of possession pursuant to a notice to end tenancy for landlord's use of property and for a monetary order for the filing fee. The tenant applied to cancel the notice to end tenancy and for the recovery of the filing fee.

These parties were involved in two prior hearings for dispute resolution. The tenant filed copies of the decisions into evidence. Both disputes related to a notice to end tenancy for landlord's use of property. The first hearing on December 04, 2012 resulted in the notice being set aside because it was found to be incorrectly filled out. The second hearing on June 12, 2013 also resulted in the notice being set aside. The landlord had indicated that the rental unit was required to be vacant for the upgrades to be installed. The Arbitrator found that the landlord had not proven this.

Both parties 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. I have considered all the written evidence and oral testimony provided by the parties but have not necessarily alluded to all the evidence and testimony in this decision.

Issues to be decided

Has the landlord validly issued the notice to end tenancy and does the landlord or a close family member of the landlord intend, in good faith, to occupy the rental unit? Does the landlord have all the necessary permits and approvals to repair the rental unit in a manner that requires the rental unit to be vacant?

Background and Evidence

The rental unit is located on the main floor of the house. The basement of the home houses two suites.

Following an inspection by the local municipality on April 02, 2013, the landlord was ordered to remove one suite and upgrade the other if he intended to use it as a self contained rental unit. The landlord testified that the rental property is approximately 40 years old and in order to be in compliance with the municipality's requirements, he needed to install hard wired smoke detectors and to upgrade the electrical, gas and plumbing systems of the entire home.

On July 14, 2013, the landlord served the tenant with a notice to end tenancy for landlord's use of property to be effective on September 14, 2013. The reasons for the notice are that the rental unit will be occupied by the landlord or the landlord's close family member and that the landlord has all the necessary permits required by law to repair the rental unit in a manner that requires the rental unit to be vacant.

The tenant disputed the notice in a timely manner and testified that the landlord has issued the notice in bad faith and has no intention of occupying the rental unit. The tenant also stated that the required upgrades are in the basement and can be carried out, with occupants in the upper floor. The tenant stated that the landlord is looking to renovate and rent the unit at a higher rent. The tenant also pointed out that the landlord has made two prior unsuccessful attempts to end the tenancy.

The landlord's son testified that he is currently living in his parents' home and intends to move into the rental unit along with his partner. The landlord also stated that he will be coordinating the upgrade work along with his son. The tenant confirmed that the work has already started and that the landlord visits the unit "*three times a day, seven days a week*". The tenant also stated that he has cooperated fully with the landlord to allow the work to continue.

The landlord filed copies of permits issued by the municipality for the construction work that he intends to carry out in the rental property. The tenant pointed out that the requirement for the upper unit to be vacant is not mentioned anywhere on the permits and since the majority of the work is for the lower level, the tenant is of the opinion that it is not necessary for him to move out, in order to accomplish the upgrade

The landlord filed a letter from the electrical contractor that states that the upper level should be vacant in the interest of the safety of the current occupants.

Analysis

In order to support the notice to end tenancy, the landlord must prove at least one of the reasons for the notice which are as follows:

1. The landlord has all the necessary permits required by law to repair the rental unit in a manner that requires the rental unit to be vacant.
2. The rental unit will be occupied by the landlord or the landlord's close family member.

As was determined in the hearing on June 12, 2013, there is no requirement indicated on the permits to carry out the upgrades, that the upper unit must be vacant for the duration of the work. Therefore I find that the landlord has not proven the first reason for the notice to end tenancy.

When the Tenant alleges bad faith on the part of the Landlord, the Landlord has an onus to prove they are acting in good faith. The landlord stated that his son intends to occupy the rental unit. The landlord's son testified and confirmed his intentions to move out of his parents' home and into their rental property.

Based on the testimony of both parties, I accept that the landlord intends to carry out major upgrades to this 40 year old building and has the required permits to do so. The tenant testified that the landlord is constantly at the rental property and that some of the upgrade work has already started. Therefore I find that the landlord intends to coordinate the work to upgrade the rental property and attends the property on a regular basis.

Based on the testimony of both parties, I find on a balance of probabilities that it is more likely than not that the landlord's son intends to move into the rental unit. I accept that the landlord and his son intend to oversee the upgrade work and it makes sense for the landlord and/or his son to be on site to do so.

The tenant argued that the landlord had failed to act in good faith and in the absence of any evidence to support this allegation; I find the landlord has met the good faith requirement of the legislation and intends to allow his son to move into the rental unit. Therefore I uphold the notice to end tenancy.

Section 68 of the *Residential Tenancy Act* allows me to order that the tenancy ends on a date other than the effective date shown on the notice. The tenant stated that he has had a kidney transplant and therefore I extend the effective date to October 31, 2013.

Pursuant to section 55(2) I am issuing a formal order of possession effective this date. This Order may be filed in the Supreme Court for enforcement.

Pursuant to section 55, without making application, the landlord could have requested to be granted an order of possession during the hearing, if the notice was upheld. The landlord chose to file his own application and therefore must bear the cost of filing his application.

Conclusion and Order

For the reasons given above, I dismiss the tenant's application and grant the landlord an order of possession.

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: September 05, 2013

Residential Tenancy Branch

