



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KE LENG
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes LANDLORD: OPL, FF
TENANT: CNL, DRI, FF

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed seeking an Order of Possession and to recover the filing fee for this proceeding.

The Tenant filed to obtain an order to cancel the Notice to End Tenancy, to dispute a rent increase and to recover the filing fee for this proceeding.

Service of the hearing documents by the Landlord to the Tenant were done by personal delivery to the Tenants son on August 19, 2013 in accordance with section 89 of the Act.

Service of the hearing documents by the Tenant to the Landlord were done by registered mail on August 25, 2013 in accordance with section 89 of the Act.

The Tenant confirmed the receipt of the Landlord's package, but the Landlord said he did not receive the Tenant's hearing package. The Tenant provided tracking information and the address of the Landlord where she sent the hearing package. I accept the Landlord is deemed to be served the Tenant's hearing package.

Issues to be Decided

Landlord:

1. Is the Landlord entitled to an Order of Possession?

Tenant:

1. Is the Tenant entitled to an order to cancel the Notice to End Tenancy?
2. Is the rent increase valid?

Background and Evidence

This tenancy started on June 1, 2005 as a fixed term tenancy and then continued on a month to month basis. The Landlord purchased the rental complex on May 1, 2013 and this tenancy continued on a month to month basis with no new written tenancy agreement. Rent is \$520.00 per month payable in advance of the 1st day of each month. The Tenant did not pay a security deposit. No formal Notice of Rent Increase has been issued by the Landlord. The Tenant said she has an email from the Landlord on July 8, 2013 indicating the rent was being increased from \$520.00 to \$1,200.00. The Tenant said she is disputing the proposed rent increase as it is not on an approved form and it did not allow for three months before it takes effect.

The Landlord said he issued a 2 Month Notice to End Tenancy for Landlord's Use of the Property dated July 28, 2013 as at present he lives with his daughter and she has had another child so they need the room he is living in. The Landlord said he would like to move into the Tenant's rental unit as soon as possible. The Landlord continued to say that when he completed the Notice to End Tenancy and the Application he made it out in the Tenant's son's name as he thought the son is the tenant. The Landlord said he was aware that the mother/Tenant had rented the unit, but he said he has not met her or seen her at the rental unit. The Tenant said she has been out of the country attending to family issues, but she is the Tenant and she has an agent (M.R.) that acts for her and pays the rent in cash. The Tenant said the rent receipts are in her name. The Landlord said the rent receipts are in the Tenant's son's name. Neither party submitted any receipts into evidence.

The Tenant continued to say she received a 2 Month Notice to End Tenancy for Landlord's Use of the Property on July 28, 2013 after she told the Landlord she was disputing the proposed rent increase. The Tenant said the Landlord is not acting in good faith as she does not believe he will move into the rental unit. The Tenant said the Landlord is only doing this to increase the rent to new tenants. The Tenant continued to say there were vacant units in the Rental complex when the Landlord issued the Notice to End Tenancy so he could have moved into one of the vacant units and not issued her a Notice to End Tenancy. As well the Tenant said the name on the 2 Month Notice to End Tenancy for Landlord's Use of the Property is in the wrong name. The Tenant said it is in her son's name and he is only an occupant. For these two reasons the Tenant requested the Notice to End Tenancy for Landlord's Use of the Property dated July 28, 2013 be cancelled and the tenancy continued as verbally agreed to.

The Landlord said he thought the Tenant's son was the tenant. As well the Landlord said the rental complex is full now and that is why he is requesting the Tenant's unit to be vacated as he wishes to move into that unit. The Landlord did not provide any evidence to support his claims.

Analysis

There was much contradictory testimony and little corroborating evidence submitted by either party to support their claims in the dispute. The Tenant provided the Notice to End Tenancy and it does not have her name on it. As well both parties submitted an email dated August 29, 2013 indicating the Landlord thought the tenant was the son of Tenant and it gave a brief outline of the situation. The email does not refer to the rent increase or provide any corroborative evidence that the Landlord needs the rental unit for his own use. The Tenant said the Landlord will not move into the unit for his own use, but the Landlord will rent it out at a higher rent because he cannot charge the Tenant the higher rent. The Landlord said he cannot live with his daughter anymore and so he requires this rental unit to live in. The Landlord did also agree that he has other rental units that turned over from time to time.

The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met. As the Landlord issued the Notice to End Tenancy it is the Landlord's responsibility to prove his claims. As the Landlord was aware of who was the original tenant and the Landlord has not provided any evidence to the contrary, I accept that the Landlord has the wrong name on the Notice to End Tenancy for Landlord's Use of the Property dated July 28, 2013. In addition the Landlord has not provided any supporting evidence that he is in need of that rental unit for his own. Consequently I find the Landlord has not met the burden of proof required to validate the Notice to End Tenancy for Landlord's Use of the Property dated July 28, 2013. Further I accept the Tenant's testimony that the Landlord may not use the unit, but is trying to increase the rent by changing tenants. I find that the Tenant has established the grounds for the possibility that the Landlord is not acting in good faith, as the Landlord could have moved into another unit in the rental complex instead of issuing the Notice to End Tenancy to the Tenant. Therefore I dismiss the Landlord's application for an Order of Possession due to lack of evidence and I grant the Tenant an Order that the Notice to End Tenancy for Landlord's Use of the Property dated July 28,

2013 is cancelled and I Order the tenancy to continue as agreed in the verbal tenancy agreement that was in place prior to the Landlord purchasing the building in May, 2013.

Further I dismiss the Tenant's application to dispute a rent increase as no Notice of Rent Increase was provide and the Tenant said the Landlord has not completed a rent increase notice on the approved form which is required.

As the Tenant has been success in this matter I Order the Tenant to recover the filing fee of \$50.00 from the Landlord by reducing the November, 2013 rent by \$50.00 from \$520.00 to \$495.00.

As the Landlord has not been successful in this matter I order the Landlord to bear the cost of the filing fee of \$50.00 which he has already paid.

Conclusion

The Landlord's application is dismissed without leave.

I order the Notice to End Tenancy for Landlord's Use of the Property dated July 28, 2013 is cancelled due to a lack of evidence and the tenancy is ordered to continue as previously agreed to.

The Tenant's application to dispute a rent increase is dismissed as no Notice was issued

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 30, 2013

Residential Tenancy Branch

