



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, MNDC

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order Cancelling a Notice to End Tenancy for Landlord’s Use - Section 47; and
2. A Monetary Order for compensation - Section 67.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Tenant entitled to a cancelation of the notice to end tenancy?

Is the Tenant entitled to the compensation claimed?

Background and Evidence

The tenancy started on August 1, 2013. Rent of \$850.00 is payable monthly on the first day of each month. On August 14, 2013 the Landlord served the Tenant with a two month notice to end tenancy for landlord’s use (the “Notice”). The reason for the Notice is that 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.

The Landlord states that the person moving into the unit is her sister who was recently approved for a visitor's visa to Canada. The Landlord states that the unit is also owned by the Landlord's parents and that this person is their child. The Tenant states that the Landlord's brother told him that there were only the three siblings in the family and that all of those siblings are living in the country. The Landlord states that this person is a biological child of the Landlord's parents but was adopted by a cousin in India.

The Tenant states that when they rented the unit, they were looking for a long term rental and the Landlord assured them they were also looking for a long term tenant. The Tenant questions why the Landlord would rent the unit to the Tenant if they knew that this person had applied for a visa and would be coming to live in the unit. Landlord states that the visa process took a long time and that they were not sure whether this person would be successful.

The Landlord states that there are other reasons why they want the tenancy to end and one of those reasons is that the Tenant is smoking marihuana. The Tenant vehemently denies smoking marihuana. The Landlord states that the sister arrived on August 23, 2013 and is currently staying with other relatives.

The Tenant claims \$1,850.00 for moving costs and stress if required to move out of the unit.

Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, on a balance of probabilities, that the tenancy should end for the reason or reasons indicated on the Notice. Given that the Landlord did not file any evidence of ownership of the house, I find that the Landlord has failed to provide evidence that her parents are also landlords and that the sister is therefore a child of one of the Landlords. Further there is some question about whether the sister is a child of the Landlord's parents as this person has been adopted by another family. Finally, the Landlord's

other reasons for wanting to end the tenancy does not support the reason on the Notice and causes questions about the validity of the reason provided. Given these reasons, I find that the Landlord has failed, on a balance of probabilities, to prove that the tenancy must end for the reason stated in the notice. I find that the Notice is not valid and that the Tenant is entitled to a cancellation of the Notice. The tenancy continues.

As the Tenant no longer has to move out of the unit, I dismiss the Tenant's claim for compensation.

Conclusion

The Notice is cancelled and the tenancy continues.

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: October 02, 2013

Residential Tenancy Branch

