



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNL

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the tenant for an order to cancel a Two-Month Notice to End Tenancy for Landlord's Use dated August 20, 2013 and effective October 31, 2013. The stated basis of the Notice is that the unit must be vacated as it will be occupied by the landlord's son.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

In addition to the landlord, there were two witnesses, one of whom was the family member who intended to occupy the rental unit. The applicant tenant was also accompanied by an advocate to assist during the proceedings.

Issue(s) to be Decided

Is the Two-Month Notice to End Tenancy for Landlord's Use supported under the circumstances or should it be cancelled as requested by the tenant?

The tenant has raised the issue of bad faith and the burden of proof is on the landlord to establish that the Two-Month Notice to End Tenancy for Landlord's Use was not issued in bad faith.

Background and Evidence

The tenancy began in May 2011 and the current rent is \$417.20. A security deposit of \$300.00 was paid.

The building houses the owner/landlord on the upper floor, includes 3 one-bedroom units on the main floor, plus a room with bath on the main floor, occupied by this tenant and a fourth one bedroom unit located in the lower part of the house.

The tenant's rental unit consists of a room and bath on the main floor, with no kitchen facilities. The entrance opens directly to the outside.

The landlord's son testified that he had recently returned from over-seas employment and now requires accommodation. The landlord's son and daughter testified that a lease has been signed between the landlord and her son to take occupancy of the suite as of November 1, 2013.

The landlord testified that they need the tenant's unit so that he could occupy it and live in the same building as his elderly mother who is struggling with a disabling condition.

The landlord's son gave first-hand testimony that this family intended in good faith to have him move into the unit in order to live in close proximity to his parent to offer her support as needed. The landlord's son stated that he would be sleeping in the one-room unit, now occupied by the tenant, but would join his mother in the upper part of the house for meals, assist with household tasks and other family activities.

The tenant questioned the landlord's stated intentions and pointed out that this landlord had made an earlier unsuccessful attempt to unfairly terminate her tenancy by serving her with a Two Month Notice to End Tenancy for Landlord's Use. The tenant stated that the earlier Notice was the subject of a hearing held on February 28, 2013 and was found by a previous arbitrator not to have been issued in good faith.

The tenant questioned the motives of the landlord and her witnesses. According to the tenant, it is apparent that the landlord issued the Notice solely for the purpose of terminating her tenancy for a different motive than the stated reason. The tenant pointed out that she had received the first Two Month Notice to End Tenancy for Landlord's Use just after she complained about the landlord accessing her rental unit without Notice. The tenant stated that she suspects that the true motive is a reprisal against the tenant, because of conflicts that had arisen with her landlord.

Analysis: End of Tenancy

Section 49(5) provides that a landlord who is an individual may end a tenancy in respect of a rental unit if *the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.* (my emphasis).

However the tenant has questioned the right of the landlord to issue the Two-Month Notice to End Tenancy on the basis of bad faith.

The "good faith" requirement under the Act imposes a two part test. First, the landlord must truly intend to use the premises for the purposes stated on the notice to end the tenancy. Second, the landlord must not have a dishonest or ulterior motive as the motive for seeking to have the tenant vacate the residential premises. If the motive for the landlord in ending the tenancy is to retaliate against the tenant or try to avoid legal responsibilities as a landlord, then the intent of the landlord is not considered to be in "good faith" and dishonesty may be inferred.

In the case before me, I do not find sufficient evidence to indicate bad faith on the part of the landlord nor to suggest that the landlord's son does not intend to actually reside in the room now occupied by the tenant. The landlord and the proposed occupant provided believable testimony that the genuine reasons behind serving the Two Month Notice to End Tenancy for Landlord's Use is to enable the landlord's son to live on the property in close proximity to his elderly parent and I do not find any significant reason to reject the landlord's or the witness' testimony. Therefore, I find insufficient grounds to cancel the Two Month Notice to End Tenancy for Landlord's Use and the tenant's request to cancel the Notice must be dismissed. Accordingly, I find that the Notice will remain in force.

I hereby dismiss the tenant's application in its entirety, without leave to reapply.

Conclusion

The tenant is not successful in the application and the Two Month Notice to End Tenancy for Landlord's Use remains in effect.

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 01, 2013

Residential Tenancy Branch

