



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Preliminary Issues

At the outset of this proceeding the male Tenant, R.S., requested permission that his wife speak on both their behalf. For the duration of this proceeding S.S. was the only tenant who provided testimony.

Introduction

This hearing dealt with an Application for Dispute Resolution filed on September 9, 2103, by the Tenants to cancel a notice to end tenancy.

The parties appeared at the teleconference hearing, acknowledged receipt of evidence submitted by the other and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

Should the 2 Month Notice to end tenancy issued August 30, 2013, be upheld or cancelled?

Background and Evidence

The Tenant testified that they have been residing in this rental unit since August 1, 2006, when they entered into a tenancy agreement with the previous owner. Their current landlord purchased the property sometime in 2012 and increased their rent to

\$1,085.00 payable on the first of each month. On July 31, 2006 they signed the original tenancy agreement and paid \$525.00 as the security deposit.

The Landlord confirmed that his wife purchased this property on approximately September 4, 2012. This property is a duplex that has four rental units (2 upper 3 bedroom units and two lower 2 bedroom units). The Tenants reside in a lower two bedroom unit which is a mirror image of the opposite lower unit and they pay the exact same rent as the other tenants. They also own two other duplexes consisting of two units (upper and lower) and all three duplexes are located in the same city.

The parties confirmed that the Landlord personally served the Tenants with a 2 Month eviction notice on August 30, 2013, for the reason that the property will be occupied by the landlord or a close family member.

The Landlord testified that his wife's thirty nine year old daughter and her son will be residing in the rental unit. He stated that the daughter is going through a divorce, is under psychiatric care, and she sold her property and has to be out by October 31, 2013. He made an oral request to have an order of possession issued in accordance with the Notice and pursuant to section 55 of the Act and argued it was simply their right to evict a tenant for their own use.

The Landlord confirmed that no documentary evidence was provided to support the matters pertaining to his wife's daughter's situation. He stated that no evidence will be provided because this is a private family matter. He argued that they chose to evict these tenants because they only needed a two bedroom unit. He indicated that they will be losing the rental income so they did not want to evict the tenants from a three bedroom unit because that would be a greater loss.

The Landlord stated that the Tenants have been excellent tenants and that they simply had to randomly choose to evict one tenant over another.

The Tenant testified that once she was served the eviction Notice she pleaded with the Landlord to evaluate the other tenants' situation. She noted that they have lived there approximately five years longer, that her husband recently suffered a heart attack, and her daughter is in her last year of high school and is at a critical point in her education to be able to attend medical school. She stated that the other tenants have only been there for about two years and they are a younger family with small kids so they will not be as negatively affected as her family will be. She said that even after begging the Landlord she was told that they had made their decision and they would not be changing their mind.

The Tenant argued that it could not be a coincidence that they chose her family because there were two recent incidents that occurred with the Landlord. She stated that the Landlord called her to have an electrician come into the unit to repair a light fixture; however, the time did not work with the Tenants' schedule so they requested a different time. Then in mid July 2013 the Landlords called to say they would be

repainting the rental unit interior and that the Tenants were required to prepare the unit by moving all of their furniture away from the walls. The Tenants told the Landlord that they were leaving on vacation as of July 22, 2103 and requested that the work be done when they return when they could move the furniture out of one room at a time. They suggested that only one room be painted at a time so for example, they could move the bedroom furniture in the living room while it is being painted and then back again. The Tenant claimed the Landlord was upset that she denied access to the property and told the Tenant to finish out her summer and they would discuss the matter in September; but they were served the 2 Month Notice on August 30, 2013.

In closing, the Landlord argued that they are aware of their rights and responsibilities under the Act and they have the right to evict any tenant if their family is moving in. He denies the Tenant's assertion that there was any rationale in choosing to evict one tenant over another. He pointed out that they have only owned this building for one year and that they gained access to the other unit to complete upgrades and repairs. He confirmed that the electrical work was completed in the Tenants' unit but the painting has not been completed.

Analysis

When a Tenant has filed to cancel a notice to end tenancy for landlord's use and calls into question the "good faith" requirement, the onus lies on the Landlord to prove the two part test as follows:

- 1) The landlord must truly intend to use the premises for the purposes stated on the notice to end tenancy; and
- 2) The Landlord must not have an ulterior motive as the primary motive for seeking to have the tenant vacate the rental unit.

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 this case, the Landlord has the burden to prove that the property will be occupied by his wife's daughter and that there is no ulterior motive for evicting these Tenants.

The only evidence before me to support the Landlord's position that the owner's daughter would be occupying this unit was verbal testimony. The Landlord indicated that no documentary evidence would be provided as this is a private family matter. There is evidence that the Landlord and owner manage two other duplexes in the same city; however, no testimony or evidence was provided to indicate why these other units were not considered for eviction.

The Tenant's assertion was that it is not a mere coincidence that they were served the eviction Notice on August 30, 2013, shortly after they refused access to the electrician; requested a delay to painting the unit; and that this upset the owner so she told them to wait until September 2013 to discuss things further.

After careful consideration of the above I find the Landlord provided insufficient evidence to prove the test of good faith. Furthermore, I find that on a balance of probabilities, an ulterior motive exists whereby the Landlord is seeking to evict these Tenants based on their recent refusal of access. Based on the aforementioned I find that the Landlord has failed to prove the "good faith" requirement for issuing the notice to end tenancy and I hereby cancel the notice.

Conclusion

The Tenants have been successful with their application. The 2 Month Notice to End Tenancy issued on August 30, 2013 is hereby cancelled and is of no force or 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 21, 2013

Residential Tenancy Branch

