



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SAHAR INVESTMENTS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNL OPL FF

Introduction

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act (the Act) for orders as follows:

- a) To cancel a notice to end tenancy for landlord's use of the property pursuant to section 49; and to recover filing fees for this application.

Service:

The Notice to End Tenancy is dated October 29, 2013 to be effective December 31, 2013 and the tenant confirmed receipt on October 29, 2013. The tenant /applicant gave evidence that they served the Application for Dispute Resolution by registered mail and the landlord agreed they received it. I find the documents were legally served.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that there is sufficient cause to end the tenancy or has the tenant demonstrated that the notice to end tenancy should be set aside and the tenancy reinstated? Is the landlord entitled to an Order of Possession if the tenant is unsuccessful in the application?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced in November 1, 2010 and rent is now \$1193 monthly. The landlord served a Notice to End Tenancy as he has been informed by the City that he is in contravention of the Bylaws.

The landlord explained that some complaints had been made about the tenancy and the City has decided to enforce their Bylaw which provides that a single family residential lot may only contain a secondary suite if the owner resides in either the building. The owners do not reside in either suite and want to close this secondary suite to be in compliance with the Bylaw; this will avoid higher taxes, complaints from neighbours and

confrontation with the City. He has not cashed the rent cheque for December and will return it to the tenant and give him the free month's rent.

The tenant filed this Application to cancel the Notice to End Tenancy. He said that many of the complaints were groundless and he has been a long term, good tenant. He asked for his moving costs. No monetary amount was claimed on the Application.

Included with the evidence is the copy of the Notice to End Tenancy and the relevant City Bylaw. On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

Analysis:

As discussed with the parties in the hearing, the onus is on the landlord to prove on a balance of probabilities that they have good cause to evict the tenant. I find the evidence of the landlord credible as it is well supported by the copy of the relevant Bylaw provision. I find that whether or not some complaints were made about the tenant or his son is not relevant as this is not the reason given for ending the tenancy. I find the evidence of the landlord credible that they are ending the tenancy to comply with the Bylaws and close the suite; they intend to use the suite for their own storage.

Under section 47, I find the landlord may end a tenancy with a one month notice to comply with government orders. This landlord has chosen to use section 49 which gives the tenant a longer notice and entitles them to one month of free rent which they are receiving for December 2013. I find the landlord has a legal right to end a tenancy for their own use of the property under section 49 and I find he has satisfied the onus of explaining the reasons and the intended use of the property. As the landlord made an oral request for an Order of Possession if the tenant was unsuccessful, I find they are entitled to the Order pursuant to section 55 of the Act.

Although the tenant orally requested a monetary order for moving expenses, he had made no monetary claim on his application so the landlord had no opportunity to respond to it. On the principles of natural justice, I decline to adjudicate on the request. The parties were advised of the provisions of section 38 in dealing with the security deposit.

Conclusion:

For the above reasons, I dismiss the application of the tenant to cancel the Notice to End Tenancy. The tenancy is terminated on December 31, 2013; an Order of Possession is issued effective on that date. No filing fee is awarded as the application was unsuccessful.

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: December 12, 2013

Residential Tenancy Branch

