



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF

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 49;
and
2. An Order to recover the filing fee for this application - Section 72.

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

Issue(s) to be Decided

Is the notice to end tenancy valid?

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

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The tenancy started in March 2007. Rent of \$550.00 is payable monthly and no security deposit was collected. The Tenant was given a notice to end tenancy for landlord’s use (the “Notice”) on November 24, 2013. A previous notice was provided for the same reason however this notice contained the wrong dates so the Landlord served a corrected one to the Tenant. The Notice states that the purchaser intends to move into the unit and the Landlord provided a copy of buyers notice of intention dated November 15, 2013.

The Tenant does not believe that the buyer has a good faith intention to move into the unit as the Landlord originally told her that the buyer plans to demolish the property. The Tenant states that after receiving the first incorrectly dated Notice, she called the buyer's realtor who confirmed with the Tenant that the house would be torn down. The Tenant states that the intention of the buyer to move into the house was only made after the Tenant disputed the Notice. The Tenant states that when she asked the Landlord directly on December 18, 2013 whether the buyer was moving in the Landlord replied "they are now". The Tenant states that the contract for sale also supports the intention to demolish the building without moving in as no items are included with the purchase of the house and that the buyer never viewed the house.

The Landlord states that the buyer viewed the home sometime in November 2013. The Landlord states that the buyers indicated that they would move in for a short period, maybe 3 or 6 months to raise funds to build a new house. The Landlord states that the buyer said they would be tearing the house down within 6 months. The Landlord states that although the house has been sold the buyer has held back funds because of this dispute.

Analysis

Section 49(5) provides that a landlord may end a tenancy in respect of a rental unit if

- (a) the landlord enters into an agreement in good faith to sell the rental unit,
- (b) all the conditions on which the sale depends have been satisfied, and
- (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:

- (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;
- (ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

Section 51 of the Act also provides for compensation to the tenant if the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice.

The Tenant's evidence was clear, compelling and persuasive that both the Landlord and the Agent initially told the Tenant that the unit would be demolished and that the intention of the buyer to move into the unit was only made after the Tenant indicated her intention to dispute the Notice. Further, based on the Landlord's evidence that the buyers told the Landlord that they would only be moving in for a short period and the Landlord's very clear statement that the intention was to demolish the house within 3 to 6 months, I find that the buyers do not have a good faith intention to reside in the unit. I find it more likely this intention was stated only after being made aware of the Act's requirements. I therefore 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 has been successful with her application I find that the Tenant is entitled to recovery of the \$50.00 filing fee. I order the Tenant to deduct this amount from the next month's rent.

Conclusion

The Notice is cancelled and the tenancy continues.

I order the Tenant to deduct \$50.00 from the next month's rent.

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: January 23, 2014

Residential Tenancy Branch

