



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

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

Preliminary Matter

It is noted that not having received the Tenant’s application until four days prior to the hearing the Landlord wished to proceed with the Hearing.

Issue(s) to be Decided

Is the Notice to end tenancy valid?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The following are undisputed facts: The tenancy started November 1, 2011. Rent of \$1,145.00 is payable monthly on the first day of each month. On February 12, 2014 the Tenant was given a 2 month notice to end tenancy for landlord’s use of property (the “Notice”). The stated effective date of the Notice is April 12, 2014. The Notice sets out

the following reason: The rental unit will be occupied by the landlord or the landlord's spouse or a close family member of the landlord or the landlord's spouse.

The Tenant's position is that the Landlord served the Notice to avoid its obligation to have the carpet replaced and other repairs made to the unit. The Tenant submits that the carpet is old and falling apart, that the Landlord was informed about this approximately 8 months ago and that in February 2014 the Landlord told the Tenant to be moved out of the unit by the end of February 2014. The Tenant submits that on February 11, 2014 she delivered a letter requesting repairs, including repairs to the carpet, to the property manager and the following day received the Notice.

The Landlord states that he is a citizen and retired resident of the United States and that he purchased the unit in 2006. The Landlord states that he used the unit for a couple of years and then left it vacant until contacted by the Tenant. The Landlord states that since selling his business a year ago he has been considering his options and after getting the repair notice from the Tenant he decided to no longer rent the unit as he could not afford the repairs. The Landlord states that he intends to keep the unit for his own use and will make repairs over 3-4 months during the summer in 2014 and 2015. The Landlord states that these repairs include issues with the roof but that the carpet is still useable.

The Tenant states that the Landlord previously stated that he would only be spending a month or two at the unit making repairs.

Analysis

Section 49 of the Act 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. Upon consideration of the evidence of each Party, it is clear that the repair requirements were the incentive for the Landlord to want to take over possession of the unit. Given these circumstances, I find that the Landlord does not have a good faith requirement to occupy the rental unit. As a result, I find that the

Notice is not valid and that the Tenant is entitled to a cancellation of the Notice. As the Tenant has been successful, I find that the Tenant is entitled to recovery of the **\$50.00** filing fee.

Conclusion

The Notice is cancelled and the tenancy continues. I order the Tenant to reduce April 2014 rent by \$50.00 in full satisfaction of the claim.

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: March 26, 2014

Residential Tenancy Branch

