



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, OPT, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for an order cancelling a notice to end tenancy for landlord's use of property; for an order that the landlord comply with the *Act*, regulation or tenancy agreement; for an Order of Possession of the rental unit or site; and to recover the filing fee from the landlord for the cost of the application.

The landlord was represented at the hearing by an agent who gave affirmed testimony. The tenant also attended and was represented by an agent. The tenant and the agent also gave affirmed testimony, however, the agent testified before the tenant to prevent the agent/witness from hearing the tenant's testimony before testifying. The parties also provided evidentiary material to the Residential Tenancy Branch and to each other. The parties were given the opportunity to cross examine each other on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

- Should the notice to end tenancy be cancelled?
- Has the tenant established that the landlord should be ordered to comply with the *Residential Tenancy Act*, regulation or tenancy agreement?
- Is the tenant entitled under the *Act* to an Order of Possession of the rental unit?

Background and Evidence

The landlord's agent was unable to testify with respect to the terms of the tenancy and testified that when the tenancy began, the house belonged to her father who was the

father-in-law of the landlord. The home now belongs to the landlord and spouse. The landlord's spouse is the son of the original landlord.

The landlord's agent further testified that the landlord's daughter lives in the 2-story unit above the rental unit. The rental unit is a basement suite but is above ground. The tenant has resided there for in excess of 20 years.

The landlord's daughter suffers from bad knees caused from synchronized swimming, and also suffers from a blood disorder that causes attacks. The attacks cause the daughter to not be able to move and stairs are very difficult for her. The landlord intends to have the daughter move into the rental unit and take over the entire house. After the tenant moves out, the landlord will remove the stove from the rental unit and there are no renovations to complete because there is already an access door with stairs from one suite to the other. The landlord's daughter will occupy the whole house and there will be no tenancies in the house.

The landlord has provided a letter from the landlord and a letter from the landlord's daughter. The letter from the landlord states that the rental unit will never be rented out again, and states, "We need this suite for (the daughter) especially for the bedroom as when (the daughter's) knees are out this way she can stay down stairs and not have to basically slide her bum up and down the stairs outside. Which of course causes her more pain moving this way." The letter from the landlord's daughter states that the rental unit will never be rented out again, and that she suffers from ITP and her kneecaps were damaged when she was a synchronized swimmer. The letter also states: "I have had allot of problems with my kneecaps so walking up and down the stairs is extremely painful and of course even more difficult when the stairs are outside (wet or the rare time snow on them)." The letter also states: "What the best part for me obtaining this unit is if my kneecaps are out I could stay downstairs as there is a bedroom down there so I won't have to be in as much pain trying to get up the stairs."

Also provided is a note from a physician stating that the note has been prepared at the request of the landlord and states that the landlord's daughter is advised to live in a ground floor suite to minimize stairs due to a medical condition of her knees.

Another letter has been provided from a doctor. The letter has a rubber stamp on the top of a homeopathic and acupuncture clinic. The letter states that the doctor has been treating the landlord's daughter for several years and one of her problems is her kneecaps. It also states: "I treat her thru acupuncture, medicines as she is in allot of pain at times with this issue. There has been many times she has trouble walking, stairs are extremely hard for her."

The final piece of evidence provided by the landlord is a copy of both sides of a wheel chair parking permit issued to the landlord's daughter.

When asked whether or not the tenant could exchange rental units with the landlord's daughter, the landlord's agent replied that the landlord wished the entire house for the landlord's daughter.

The landlord's agent also testified that another tenant resided in the upper unit until about 2 ½ years ago when the landlord issued a notice to end tenancy for landlord's use of property so the landlord's daughter could reside in that rental unit. When asked why the landlord's daughter didn't move into the ground level at that time, the landlord's agent testified that her condition has deteriorated over the past few years, but does not know why the landlord has not moved the daughter to a different unit; the landlord has one other property.

The landlord served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use of Property by leaving it at the tenant's door on February 22, 2014 and a copy has been provided for this hearing. The notice is dated February 20, 2014 and contains an expected date of vacancy of April 30, 2014. The reason for issuing the notice states: "The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse."

During cross examination, the landlord's agent was asked about a spelling error that was identical on the landlord's daughter's letter and the letter from the homeopathic and acupuncture clinic. In both letters the word "allot" appears. The landlord's agent replied that it was appalling that the tenant's agent would make an accusation of providing fraudulent documentation.

The tenant's witness testified that the tenant has been resident in the rental unit for 29 years and moving now would be a terrible burden. Two noise complaints were made recently due to the witness' loud speaking voice, which he has now learned to consider, but this notice to end tenancy was issued right on the heels of that complaint. Also, when the previous tenant was given a notice to end tenancy for landlord's use of property, the tenant was given about 6 months notice, not 2. The same treatment was not applied to both tenants.

The tenant testified that this month-to-month tenancy began on January 1, 1985 and the tenant still resides in the rental unit. Rent in the amount of \$530.00 per month is

payable in advance on the 1st day of each month and there are no rental arrears. The landlord, at the time that the tenancy started, did not collect a security deposit or a pet damage deposit, and there is no written tenancy agreement.

The rental unit has 2 stairs on the outside and 1 inside. The unit the landlord's daughter currently lives in has about 6 stairs. The tenant testified that regardless of where the landlord's daughter lives, she will have to deal with stairs. By taking over the entire house, the daughter will have to go up a flight of stairs to access the upper floors, and questions the logic of using stairs inside or outside.

Analysis

Firstly, with respect to the testimony regarding the spelling errors in the letters of the landlord's daughter and the doctor from a homeopathic and acupuncture clinic, the landlord's agent was appalled that such an accusation would be made, however, I too find it curious that the same word, "allot" is misspelled. I further note that the letter from the homeopathic and acupuncture clinic doctor contains numerous grammar errors that one would not expect to see from a learned doctor. Although the landlord's agent was not able to explain the curiosity, I find that it is just as likely that the landlord or the landlord's daughter wrote the letter and the doctor simply signed it. I therefore find that there has been no attempt to fraudulently deceive this tribunal.

The *Residential Tenancy Act* allows a landlord to end a tenancy if the landlord intends in good faith to use the rental unit for occupancy by a close family member (father, mother or child) of the landlord or the landlord's spouse. In this case, the landlord has already given a notice to end tenancy for the same reason and for the same daughter in the same house to a different tenant. When asked whether or not the tenant could exchange rental units with the landlord's daughter, the landlord's agent replied that the landlord wished the entire house for the landlord's daughter. The landlord has a contract with the tenant, and although I sympathize with the daughter's pain, in the circumstances, I cannot find that the landlord has issued the notice to end tenancy in good faith. The landlord may very well want the entire house for her daughter, but I am not satisfied that the landlord's daughter requires the entire house and has already removed a tenant for the same reason.

I therefore cancel the notice to end tenancy and the tenancy continues.

The tenant has also asked for an Order of Possession of the rental unit. Having found that the tenancy continues, and considering that the tenant already has possession of the rental unit, I decline to issue such an order for enforcement. An Order of Possession for a tenant is commonly issued when a tenant has entered into a tenancy

agreement with a landlord and the landlord doesn't allow the tenant to move in, or such similar situation. The tenant has possession, and the tenancy continues, and therefore the tenant's application for an Order of Possession is hereby dismissed.

The tenant also applied for an order that the landlord comply with the *Act*, regulation or tenancy agreement and stated that that was in reference to issuing the notice. I find that there is no requirement to order the landlord to comply with the *Act*, regulation or tenancy agreement, and I dismiss that portion of the tenant's application.

Since the tenant has been partially successful with the application, the tenant is also entitled to recovery of the \$50.00 filing fee for the cost of the application. I order the tenant to reduce a future month's rent by that amount as full recovery.

Conclusion

For the reasons set out above, the notice to end tenancy for landlord's use of property issued on February 20, 2014 is hereby cancelled and the tenancy continues.

I hereby issue an Order of Possession of the rental unit to the tenant.

The tenant's application for an order that the landlord comply with the *Act*, regulation or tenancy agreement is hereby dismissed.

I hereby order the tenant to reduce a future month's rent by \$50.00 as recovery of the filing fee.

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 24, 2014

Residential Tenancy Branch

