



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

This is an application to cancel a Notice to End Tenancy that was given for landlord use.

Some documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

The issue is whether or not to cancel or uphold a Notice to End Tenancy that's been given for landlord use.

Background and Evidence

The landlord has served the tenant with a Notice to End Tenancy that states:

- The rental unit will be occupied by the landlord or the landlord spouse or a close family member of the landlord or the landlord spouse.

The landlord testified that:

- He has given the Notice to End Tenancy because his daughter and granddaughter are going to move into the rental unit.
- The rental unit will be close to his granddaughter school, and his daughter is going to be pursuing upgrading at the local university and therefore this will assist her.

- His daughter fully intends to move into the rental unit and live in the rental unit full-time, and at least for six months.
- He's not sure exactly when his daughter will move in, as she has not been able to give notice at her present rental unit because the applicant disputed this Notice to End Tenancy and she did not want to be left without a place to live.
- His daughter will give her Notice to End Tenancy as soon as they are sure that the applicant is moving out of the rental unit.
- That will give him enough time to paint the unit and get it ready for his daughter and granddaughter.

The tenant testified that:

- He believes this Notice to End Tenancy has been given in bad faith because the landlord gives him a Notice to End Tenancy whenever he is angry with him.
- First he gave a Notice to End Tenancy a couple of years ago stating that his wife was going to move into the rental unit.
- Next he gave a Notice to End Tenancy stating that his sister was going to move into the rental unit.
- Both the previous notices were set aside.
- This most recent notice was given just three days after a confrontation he had with the landlord when the landlord appeared at his door drunk and attempted to get access. He refused access and the landlord got angry, and eventually the police were involved.
- He believes the notice is been given in retribution for him having confronted the landlords drunken behavior.

Analysis

I am not convinced that this Notice to End Tenancy has not been given in good faith.

Good faith is an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage.

A claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End the Tenancy.

If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy.

If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive for ending the tenancy.

In this case the tenant has claimed that the Notice to End Tenancy was given in bad faith, because he received the notice just a few days after an altercation with the landlord, however he has provided no evidence supporting the claim.

The applicant is also claiming that this is only one of numerous attempts to end this tenancy for landlord use, and claims that all previous attempts were dismissed, however again although he has provided one previous Notice to End Tenancy, he has provided no evidence to show if and why the previous notices were dismissed.

The landlord has provided a letter from his daughter stating that she fully intends to move into the rental unit with her daughter to provide support for her father, and to take the opportunity to do some upgrading at the local university.

In light of the evidence provided I accept that the landlord fully intends to have his daughter move into the rental unit, and therefore I will not be setting this notice aside.

There is some dispute over whether the Notice to End Tenancy was served on December 30, 2013, for January 1, 2014, and since the landlord has provided no supporting evidence to prove the date of service, it's my finding that this tenancy ends on March 31, 2014.

As the tenant has already had the month of February 2014 rent free as the compensation required under the act, the tenant is required to pay the March 2014 rent.

Conclusion

The tenant's application to cancel the Notice to End Tenancy is dismissed and at the request of the landlord I have issued an Order of Possession for 1:00 PM on March 31, 2014.

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 03, 2014

Residential Tenancy Branch

