



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Colliers International
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, RP

Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end this tenancy and an order compelling the landlord to perform repairs. Both parties participated in the in person hearing.

Issues to be Decided

Should the notice to end tenancy be set aside?

Should the landlord be ordered to perform repairs?

Background and Evidence

The parties agreed that on or about December 9, 2013, the tenant was served with a 2 month notice to end tenancy for landlord's use of property (the "Notice"). The Notice alleged that the landlord or a close family member intended to occupy the rental unit.

The tenant alleged that the Notice was given in bad faith and that the landlord was seeking to end her tenancy for reasons other than the reason identified on the Notice.

The owner of the rental unit appeared at the hearing and testified that he owns the residential property, which has a number of rental units. He testified that his sister passed away in September 2013 and that he and his sister had created the garden surrounding the residential property, planting several plants and shrubs. The owner testified that the rental unit is the only unit in the building which faces the whole garden and that he believes that living in the rental unit and viewing the garden will be a source of emotional strength as he deals with the loss of his sister. The owner testified that a rose bush planted by he and his sister is immediately outside the window of the rental unit.

The owner further testified that he intends to renovate and sell the residence in which he currently lives.

The tenant testified that she has lived in the rental unit for 24 years and been subject to regular rent increases throughout that time. She provided evidence that she has made a number of complaints and requests for repairs in recent months, including for plumbing and heating issues, and that she believes the owner has issued the Notice in retaliation for her request for repairs. She further testified that she has had a number of run-ins with the owner in which he swore at her, yelled and said he shouldn't have let her move in. She further testified that the landlord has called her a "pain in the ass".

The tenant stated that while the rosebush in question is just outside her window, she occupies a lower floor suite which does not offer the best view of the landscaped area. She further stated that most of the landscaping consists of trees and that there are just 2 rosebushes on the property, which include the one outside her window and one further away which cannot be easily viewed from her suite.

The owner acknowledged having sworn at the tenant and apologized for doing so, but insisted that he was not ending the tenancy because of her actions but solely because he wanted to view the garden from the rental unit.

The tenant testified that number of repairs are required and the owner and his agents agreed that should the tenancy continue, repairs would be performed.

Analysis

The landlord bears the burden of proving that he has grounds to end the tenancy. The landlord issued a Notice under section 49 of the Act which not only requires him to intend to occupy the rental unit, but also form that intention in good faith, which means he cannot have an ulterior motive for ending the tenancy.

While I do not doubt that the owner intends to occupy the rental unit, I find on the preponderance of the evidence that he has not established that he served the Notice in good faith. The fact that the owner and the tenant have had a number of disagreements in recent months which resulted in the owner speaking inappropriately to the tenant suggests that the owner may have another motive in ending the tenancy. I find that the owner has not established that he served the Notice in good faith and for that reason, I order that the Notice dated December 5, 2013 be set aside and of no force or effect. As a result, this tenancy will continue.

As the tenancy will be continuing, I order the landlord to perform the following repairs which at the hearing the owner agreed that he would perform.

- Repair window frames;
- Replace broken window;
- Repair damaged and cracked plaster; and
- Repair or replace tub surround.

The landlord should complete these repairs no later than June 30, 2014.

I note that the tenant does not have the right to dictate who performs those repairs or insist that they be performed while she is at home. The landlord has an obligation to provide 24 hours written notice of entry when performing repairs and may either perform the repairs himself or send an agent to perform repairs on his behalf.

Conclusion

The Notice is set aside and of no force or effect. The landlord is ordered to perform repairs as outlined above.

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 04, 2014

Residential Tenancy Branch

