



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 116 WEST HASTINGS HOLDINGS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL

Introduction:

The tenant has applied for resolution of a dispute in the tenancy at the above noted address, and requests an order to cancel a 2 month Notice to End Tenancy, given for landlord use of property to convert the unit for use by a caretaker of the residential property.

Issue(s) to be decided:

Should the Notice be cancelled?

Background and Evidence

1. The tenant rents a single room (which contains a private washroom) from the landlord. The room is on the 4th floor of a building in the Gastown area of Vancouver. Monthly rent is \$825.00. The landlord submits it is the nicest unit in the building.
2. The employment of a former caretaker of the landlord ended, and in May a new caretaker was hired. The landlord testified it is hard to find caretakers for SRO buildings, and the tenant's suite was offered to the new caretaker as incentive (or to "sweeten the pot") for the new caretaker to accept the position. The caretaker accepted the position, and the landlord gave a 2 month notice to the tenant, effective to end his tenancy July 31, 2014. The new caretaker is living in a different unit, pending the availability of the subject unit.
3. The tenant argues the former manager still lives in the premises, and that moving out will be difficult as he has health or injury related concerns that will make moving difficult.
4. The landlord relies that the former caretaker moved out in April.

Analysis:

The Residential Tenancy Act (in section 49(6)(e) permits a landlord to give a 2 month notice for landlord use of the premises, provided the landlord has all necessary permits and approvals required by law, and intends in good faith to convert the rental unit for use by a caretaker, manager or superintendent of the residential property.

In the case of the employment of a caretaker, no permit would be required, and the only necessary approval would be a contract of employment. I accept the landlord's testimony that in fact a contract has been entered into with the new caretaker, and that he has already begun his duties.

The words "in good faith" do not appear on the notice ending the tenancy itself, but section 49(6) of the *Residential Tenancy Act* specifically uses these words, and allows the landlord to end a tenancy agreement in cases where the landlord intends **in good faith**, (*emphasis mine*) to convert the premises for use by a caretaker.

Policy Guideline #2 specifically addresses the issue of "good faith". A landlord may intend to convert the premises for caretaker use as stated on the notice to end. That intention may, however, be motivated by dishonest or undisclosed purposes. For example, if the primary motive for the landlord ending the tenancy is to retaliate against the tenant or end the tenant's tenancy because of some dispute with the tenant, then the landlord does not have a "good faith" intent. Similarly, if the landlord is attempting to avoid his legal responsibilities as a landlord, or is attempting to obtain an unconscionable or undue advantage by ending the tenancy, the intent of the landlord to move into the premises may not be a "good faith" intent. Rather, the circumstances may be such that dishonesty may be inferred from the landlord's motives.

Accordingly, where the "good faith" intent of the landlord is called into question, the burden is on the landlord to establish that the landlord truly intends to convert the premises for caretaker use, and that the landlord is not acting dishonestly or with an ulterior motive for ending the tenancy.

In this case, I accept the landlord's testimony of a true intention for the caretaker to occupy this unit. It was specifically offered to the caretaker to entice the caretaker into taking the position, since it was the nicest suite in the building.

I also find no evidence of a dishonest or ulterior motive for ending the tenancy. There is no indication that the landlord is simply trying to remove or retaliate against this particular tenant for any reason. This is supported by the fact the landlord has no opposition to the tenant moving to a different suite in the building.

I therefore find that the landlord has a good faith intention in this case, and all necessary grounds for the ending of the tenancy are in place. The Notice is therefore effective to end the tenancy July 31, 2014. The tenant's application for an Order to cancel the notice is dismissed.

Conclusion

The tenancy shall end July 31, 2014 pursuant to the subject Notice. The tenant's claim is dismissed.

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: July 11, 2014

Residential Tenancy Branch