



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

This was an application by a tenant to cancel a landlord use two month Notice to End the Tenancy dated May 20, 2014 with an effective date of July 31, 2014. Both parties were represented at the hearing.

Issue(s) to be Decided

Is the landlord entitled to an Order for possession or will the tenancy continue?

Background and Evidence

Service of the Application was admitted. The tenant admitted receiving the Notice to End the Tenancy on May 24, 2014.

The landlord's agent DS testified that the original landlord died on January 29, 2014. DS testified that CC his wife, the executor and the original landlord's daughter was now acting as the landlord. DS testified that the notice was incorrectly completed by his wife in that she checked off sections 49(5), the sale of a unit and 49(3) where a close family member intends to move in. DS testified that he landlord is only relying upon section 49(3) of the Act. DS testified that the granddaughter of the deceased who is also the niece of CC the current landlord, intends to move into the unit on July 31, 2014 in order to "save money on rent." DS testified that his wife CC and her mother already reside on the main floor of the building. He is asking for an Order for Possession effective on August 31, 2014.

The tenant testified that she was advised by another daughter of the deceased landlord that she would not have to move and then subsequently advised that she planned to sell the unit. She was surprised to receive the Notice and does not wish to move.

Analysis

I am asked to decide whether the Notice should be aside and the tenancy continue, or whether the Notice is upheld and the tenancy end on the effective date of the Notice. The Notice is given under section 49 (3) of the *Residential Tenancy Act*, which states:

(3) 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.

Section 49(1) of the Act defines “close family member” as follows;

Landlord's notice: landlord's use of property

49 (1) In this section:

"close family member" means, in relation to an individual,

(a) the individual's **father, mother, spouse or child**, or

(b) **the father, mother or child** of that individual's **spouse**;

Landlord is defined as:

"landlord" means

(a) for the purposes of subsection (3), an individual who

(i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and

(ii) holds not less than 1/2 of the full reversionary interest,

Policy Guideline 2 states:

GOOD FAITH REQUIREMENT

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 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.

It is the landlord who has the burden of proof on the balance of probabilities to establish that he/she gave notice to end the tenancy because the landlord or a close family member of the landlord or landlord's spouse, intends in good faith to occupy the rental unit. This onus must be satisfied strictly where the landlord seeks to end a tenancy.

Here I find that it has not been proven who the lawful landlord is pursuant to section 49 (1), other than the deceased. That being the case the deceased's granddaughter is not a "close family member" of the landlord. Alternatively if the deceased's daughter CC can be considered the landlord, her niece is also not a "close family member" of the landlord. Accordingly the respondent has not satisfied me on the evidence and law that **the landlord or a close family member of the landlord or of landlord's spouse** intends in good faith to occupy the rental unit. Accordingly I have allowed the tenant's application and have cancelled the Notice to End the Tenancy.

Conclusion

I have cancelled the Notice to End the Tenancy dated May 20, 2014 with an effective date of August 30, 2014. I Order that the tenancy continue. I award the filing fee of \$ 50.00 to the tenant and direct that she be permitted to deduct that amount from her next rental payment.

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 07, 2014

Residential Tenancy Branch

