



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

This hearing was convened to deal with the tenants' application for dispute resolution under the Residential Tenancy Act (the "Act"). The tenants applied for an order cancelling the landlord's 2 Month Notice to End Tenancy for Landlord's Use of the Property (the "Notice").

The tenants, their legal advocate and landlord JT attended the telephone conference call hearing, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, both parties confirmed receiving the other's evidence.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, respond to the other's evidence, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Are the tenants entitled to an order cancelling the landlord's Notice?

Background and Evidence

The undisputed evidence showed that this tenancy began on November 11, 2013, monthly rent is \$750, and the tenants paid a security deposit of \$375 at the beginning of the tenancy.

The subject of this dispute is the *2 Month Notice to End Tenancy for Landlord's Use of Property* issued on June 8, 2014, by leaving the Notice with tenant DB, with an effective end of tenancy date listed as August 31, 2014, according to the landlord. The reason indicated on the Notice is that the rental unit will be occupied by the landlord, the landlord's spouse, or close family member of the landlord or landlord's spouse.

The Notice informed the tenants that they had 15 days of receipt of the Notice to file an application for dispute resolution with the Residential Tenancy Branch ("RTB") to dispute the Notice; otherwise the tenants are conclusively presumed to have accepted that the tenancy is ending and must move out of the rental unit by the effective move-out date listed on the Notice. The tenants filed their application within the 15 days allowed.

Pursuant to the Rules, the landlord proceeded first in the hearing and submitted evidence in support of his Notice.

The landlord submitted that he bought a parcel of land located in the municipality where the rental unit is located, and as he lives in another city, a far distance from the municipality in question, he required a place to live while developing the property and during construction. The landlord submitted documentary evidence of the sale of the other property in question.

The landlord submitted further that the rental unit, a 1 bedroom, ground level apartment in a multi-unit building, was the closest unit to the furnace and electrical rooms, so that the unit would be most convenient to store his tools and equipment while he lived there. The landlord submitted further that the location of the rental unit would be the least intrusive to the other tenants in the building, and that he required only 1 bedroom.

The landlord submitted that he planned on living in the rental unit at least 3 weeks a month during the development and construction of the other development property.

The landlord submitted that he is not trying to raise the rent as these tenants were already paying the highest rent in the apartment building.

Tenants' response-

The tenants, through their advocate, countered that the landlord handed out several Notices the day the tenants received their Notice, that the landlord intended on staying a couple of days a month during the development and construction, and that the

landlord's father, who was also listed as landlord, owned a home and several properties in the local area.

The advocate also pointed out that tenant NP was wheelchair bound, and that the first floor apartment was the most convenient for her to use.

The advocate also questioned the good faith of the landlord in issuing the Notice, as he has accused the tenants of selling illegal drugs.

Landlord's rebuttal testimony-

The landlord stated that he has not issued any other eviction Notices, and that as of September there are no other empty units in the building.

Analysis

Section 49(3) of the Act stipulates that 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.

In considering whether the landlord has acted in good faith, a two part test is imposed, namely, that landlord must truly intend to use the premises for the purposes stated on the notice to end the tenancy and that the landlord must not have a dishonest or ulterior motive as the primary motive for seeking to have the tenant vacate the residential premises.

As to the Notice, in the circumstances before me, I find that the landlord has submitted sufficient evidence that he intends to occupy the rental unit for his own use for the foreseeable future during the development and construction of the other property previously referenced.

Further, after hearing the evidence of both parties, I cannot find that the landlord had an ulterior motive in issuing the Notice seeking the end of the tenancy.

I therefore find that, upon a balance of probabilities, the landlord has met his burden of proving the rental unit will be used for the stated purpose listed on the Notice and that the Notice was issued in good faith.

I therefore dismiss the tenants' application seeking to cancellation of the Notice, without leave to reapply.

The landlord and the tenants are hereby advised of the provisions of section 51(1) of the *Act*, which stipulates that a tenant who receives a notice to end a tenancy pursuant to section 49 of the *Act* is entitled to receive from the landlord before the effective date of the notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

The landlord and the tenants are also advised of the provisions of section 51(2) of the *Act*, which stipulates that the landlord must pay the tenants the equivalent of two months' rent payable under the tenancy agreement if steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 of the *Act* within a reasonable period after the effective date of the notice or if the rental unit is not used for that stated purpose for at least six months beginning within a reasonable period after the effective date of the notice.

Conclusion

For the reasons stated above, the tenants' application is dismissed.

The landlord did not request an order of possession for the rental unit, pursuant to section 55(1) of the *Act*, and therefore one is not granted. The Notice, however, remains valid and enforceable.

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: August 18, 2014

Residential Tenancy Branch

