



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 5th Ave Investments Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

OPL, CNL

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant(s), and one brought by the landlord(s). Both files were heard together.

The landlord's application is a request for an Order of Possession based on the Notice to End Tenancy that was given for landlord use.

The tenant's application is a request to cancel a Notice to End Tenancy that was given for landlord use.

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing.

I have given the parties the opportunity to present all relevant evidence, and to give oral testimony, 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 to uphold or cancel a Notice to End Tenancy that was given for landlord use.

Background and Evidence

On August 28, 2014 the tenant was served with a two-month Notice to End Tenancy stating the following reasons for ending the tenancy:

- The rental unit will be occupied by the landlord or the landlord spouse or close family member (father, mother, or child) of the landlord or the landlord's spouse.

The landlords testified that:

- The reason the notice has been is that the company owner's son fully intends to move into the rental unit.
- The owner's son stated that he plans to live in the rental unit for six months to a year at least.
- The owner's son is not able to continue living where he is now, due to the fact that his disruptive lifestyle is bothering the other occupants of the building he is presently in.
- This unit is more suited to the owner son who keeps odd hours, and does things like shower or cook in the middle of the night. This is a corner unit and therefore it will be less disruptive to other tenants in the building.

The tenants advocate has argued that:

- First of all, this notice has not been given under the correct section, as this rental unit is owned by a corporation and not by a person, and therefore it's not possible for a corporation's son to be moving into the rental unit.
- Secondly they believe that this Notice to End Tenancy has been given in bad faith, as it was issued one day after a previous hearing, at which it was ordered that the landlord hire a licensed professional mould inspector to inspect the rental unit and produce a detailed report.
- They believe this notice has been given so that the landlords can have the tenant move out of the rental unit rather than pay to have a mould inspector come and provide an inspection report as ordered.

- The decision from the Arbitrator had ordered that this report be done by September 30, 2014, however, to date, the landlord has not had a mould inspector in to inspect the mould or provide a report.
- They are therefore asking that this Notice to End Tenancy be canceled.

In response to the tenant's testimony the landlord testified that:

- They got the decision of the Arbitrator from the previous hearing, and there is nothing in it that states that they are to hire a mould inspector.

Analysis

It is my finding that the landlords have not given a proper Notice to End Tenancy.

The tenants are correct that this rental unit is owned by a corporation and therefore it is not possible for close family member of a corporation to be moving into the rental unit.

The correct box that the landlords should have used on the Notice to End Tenancy is the box that states:

- A family corporation owns the rental unit and it will be occupied by an individual who owns, or whose close family members own, all the voting shares.

The person who intends to move into this rental unit is the son of the two people who own all the voting shares of this family corporation.

Secondly it is also my finding that this Notice to End Tenancy has not been given in good faith.

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, I must consider motive when determining whether to uphold or cancel 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.

I find that this notice was most likely given to avoid having to comply with an order from a previous dispute resolution hearing. The Arbitrator in the previous hearing issued a number of orders including a requirement for the landlords to hire a licensed professional mould inspector and obtain a written report from the professional.

The landlords claim that the decision does not make any order for them to hire a mould inspector, however I have read the decision and it certainly does.

I find “on the balance of probabilities” therefore, that this Notice to End Tenancy has been given in bad faith.

Conclusion

The two-month Notice to End Tenancy dated August 28, 2014 is hereby canceled and this tenancy continues.

The landlord's request for an Order of Possession is denied.

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: October 28, 2014

Residential Tenancy Branch

