



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

This is an application to cancel a Notice to End Tenancy that was given for landlord use.

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

I have given the parties and the witness 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 and the witness.

All testimony was taken under affirmation.

Issue(s) to be Decided

The issue is whether or not to uphold or cancel a Notice to End Tenancy that was given for landlord use.

Background and Evidence

The landlord's son testified that:

- The Notice to End Tenancy has been given because the landlord wants her son to move into the rental unit, and her son also needs a place to move to.
- The applicant tenant used to assist the landlord with gardening, some household chores, and driving; however is no longer doing so.
- If the landlord's son moves into the rental unit he will be able to assist her with the gardening, household chores, driving etc.
- The landlord is 85 years old and has had two hip replacements and may need cataract surgery, and she definitely needs assistance around the house.

- Further her son fully intends to move into the rental unit and live with her, both for his benefit, as he needs a place to live, and for her benefit.
- They therefore request that the Notice to End Tenancy be upheld and that an Order of Possession be issued for as soon as possible.

The tenant testified that:

- He believes that the Notice to End Tenancy has not been given in good faith.
- He was given a previous Notice to End Tenancy under section 48 that claimed that he had been an employee and was no longer acting as an employee however that notice was set aside.
- He was never an employee of the landlord, and there was never an agreement for him to do work and assist the landlord in exchange for lower rent.
- He had been assisting the landlord with things such as gardening, driving, and other household chores, however this had been done out of the goodness of his heart.
- As stated in the letter he sent to the landlord, he no longer feels emotionally able, and finds it too much of a burden, to provide this extra assistance to the landlord.
- The original Notice to End Tenancy was canceled because he was not acting as an employee, and less than three hours later he received this Notice to End Tenancy and therefore he believes it has been given in bad faith just to get him out of the rental property.
- The landlord seems to have some conflict with him, however he is not sure why that has occurred, but he believes landlord just wants him out due to this conflict.

Analysis

It is my finding that the section 49 Notice to End Tenancy has not been given in bad faith.

The landlords have testified that the notice has been given in order to allow the landlord's son to move in, so that he has a place to live, and so that the landlord has someone to assist her with daily tasks, and I accept that explanation and find that there is no ulterior motive involved.

The tenant has argued that it has only been given to get rid of him, however the tenant has admitted that he used to assist the landlord with numerous daily tasks, and no longer feels able to do so, and although he has stated that these tasks were done out of the goodness of his heart and not as an obligation, the tasks were still done for the landlord and were of great assistance to her.

The fact that the tenant is no longer able or willing to assist the landlord with her daily tasks does mean that the landlord needed to look elsewhere for that assistance, and it's reasonable that she is allowing her son to move into the rental unit to assist her.

The tenant has also argued that the fact that received this notice just three hours after the previous Notice to End Tenancy was canceled shows that it was given in bad faith; however that section 48 notice was also given because the tenant was no longer assisting the landlord with daily tasks, and although that notice failed as it was an improper notice in this situation, the fact still remains that the landlord will need assistance with daily tasks, and allowing her son to move into the rental property resolves that situation.

Conclusion

This application to cancel the section 49 Notice to End Tenancy is dismissed at the request of the landlords I have issued an Order of Possession pursuant to Section 55 of the Residential Tenancy Act.

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 07, 2014

Residential Tenancy Branch

