



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the tenant, his advocate, and the landlord.

During the hearing, the landlord did not verbally request an order of possession should the tenant be unsuccessful in his Application.

Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property, pursuant to Section 49 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agree the tenancy began in July 2000 as a month to month tenancy with a current rent of \$858.00 due on the 1st of each month with a security deposit of \$295.00 paid.

The tenant submitted into evidence a copy of a 2 Month Notice to End Tenancy for Landlord's Use of Property issued on November 10, 2014 with an effective vacancy date of January 31, 2015 citing the rental unit will be occupied by the landlord or the landlord's spouse or a close family member of the landlord or the landlord's spouse.

The landlord submitted that the property is owned by his mother and that he is the person who is planning to move in to the rental unit. The landlord explained that up until

now he has been in the penthouse which has recently been rented with a new tenancy that began on December 15, 2014. He stated he is currently in another unit in the building. He also stated that other than the unit is now in he has no other vacancies or ones scheduled for January 1, 2015.

He states that his mother had allowed him to stay in the penthouse on the understanding that once it was rented it would be relocated into the subject rental unit. The landlord provided no documentary evidence to support this statement such as an agreement between himself and his mother or a sworn statement from his mother.

The landlord submits that this is the perfect rental unit for his purposes because he has a view of the pool and the front entrance. The landlord did not indicate why this specific unit on the 7th floor was a better location than the same units on any of the other floors in the building.

The tenant submits that the landlord has issued the 2 Month Notice without good faith. The tenant submits that he had worked for the landlord in the building but since he has retired the landlord has:

1. Tried to impose a rent increase in excess of the allowable rent increases;
2. Accused the tenant of changing locks in the unit and not providing the landlord a key – a dispute that at this point does not appear to be totally resolved; and
3. Attempted to end the tenancy by issuing a 1 Month Notice to End Tenancy for Cause on September 18, 2014 with an effective vacancy date of October 31, 2014 citing the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord and put the landlord's property at significant risk; the tenant has engaged in an illegal activity that has or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord and jeopardized a lawful right or interest of another occupant or the landlord; the tenant has not done required repairs of damage to the unit; and the tenant has breached a material term of the tenancy agreement that was not correct within a reasonable time after written notice to do so. This notice was cancelled in an arbitration decision dated November 7, 2014.

Analysis

Section 49 of the *Act* allows a landlord to end a tenancy by issuing a notice to end tenancy with an effective date not earlier than 2 months after the date the tenant

receives the notice and the day before the day in the month that rent is payable under the tenancy agreement if:

- i. The rental unit will be occupied by the landlord or the landlord's spouse or a close family member of the landlord or the landlord's spouse;
- ii. A family corporation owns the rental unit and it will be occupied by an individual who owns, or whose close family member owns, all the voting shares;
- iii. All conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give a notice because the purchaser or a close family member intends in good faith to occupy the rental unit;
- iv. The landlord has all the necessary approvals required by law, and intends in good faith, to renovate or repair the rental unit in a manner that requires the rental unit to be vacant;
- v. The landlord intends to convert the residential property to strata lots or a not-for-profit housing cooperative;
- vi. The landlord intends to convert the rental unit for use by a caretaker, manager or superintendent for the residential property; or
- vii. The landlord has all necessary permits and approvals required by law to convert the rental unit to a non-residential use.

Residential Tenancy Policy Guideline 2 states that good faith is an abstract and intangible quality that encompasses an honest intention, the absence of malice, and no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End Tenancy.

The guideline goes on to say that 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 has a dishonest purpose.

If good faith is called into question the burden rests with the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy and that they have no other purpose that negates the honesty of the intent or ulterior motive.

While there is no evidence before me to prevent me from accepting that the owner intends to have her son move into the rental unit, I am satisfied that the landlord has the ulterior motive of ending the tenancy with this tenant.

I find, based on the recent history between the two parties and the fact that this 2 Month Notice was issued 3 days after the decision to cancel the 1 Month Notice to End

Tenancy for Cause was written that the landlord's intent, at least in part, was to specifically end this tenancy. While I accept that the landlord has entered into a new tenancy agreement for the penthouse I note the landlord has already been able to move into another unit in the building.

Despite the landlord's assertion that this rental unit is the perfect one for his purposes in managing the building he has provided no evidence as to why it is more perfect than any of the same units on different floors. The landlord has also not provided any evidence as to why, if this unit is the perfect one for his purposes, he lived in the penthouse up until now.

Conclusion

Based on the above, I grant the tenant's Application and cancel the 2 Month Notice to End Tenancy for Landlord's Use of Property issued on November 10, 2014.

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: December 18, 2014

Residential Tenancy Branch

