



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL. FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order of Possession – Section 55; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Landlord entitled to an order of possession?

Background and Evidence

The tenancy of a basement unit started on June 1, 2012. Rent of \$1,350.00 was payable monthly on the first day of each month. At the outset of the tenancy the Applicant collected \$675.00 as a security deposit. On September 23, 2014 the Tenant was given a two month notice to end tenancy for landlord’s use (the “Notice”).

The Applicant’s Agent states that the purchase of the unit has not been finalized but that it is imminent. The Applicant’s Agent states that the purchaser of the unit provided a letter in writing to the Applicant that the purchaser or close family member intends in

food faith to occupy the rental unit. No copy of this letter was provided. The Applicant's Agent states that they request an order of possession to finalize the matter.

The Tenant states that on November 16, 2014 the purchaser entered into a tenancy agreement with the Tenant for a room in the same basement unit to start December 1, 2014 (yesterday). The Tenant thought that the sale of the unit was completed at this point but that he also heard that the sale has yet to be finalized. The Tenant states that the equivalent of one month's rent was given to the Tenant as compensation for ending the tenancy of the entire basement unit. The Tenant is concerned that an order of possession for the Applicant conflicts with the new tenancy agreement.

Analysis

Section 55(5) of the Act provides that a landlord may end a tenancy in respect of a rental unit if

- (a) the landlord enters into an agreement in good faith to sell the rental unit,
- (b) all the conditions on which the sale depends have been satisfied, and
- (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
 - (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;
 - (ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

The Applicant bears the burden of proof that the Notice is valid and that the Landlord is entitled to an order of possession. As the Applicant's evidence is ambiguous in the face of the Tenant's evidence of a new tenancy at the same address for which the Applicant seeks an order of possession, I find that the Applicant has not established an entitlement to an order of possession. I therefore dismiss the application.

Conclusion

The application is dismissed.

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 03, 2014

Residential Tenancy Branch

