



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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tenant protect privacy]

DECISION

Dispute Codes CNL

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property, issued on November 5 2014.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice to End Tenancy. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenant's request to set aside the Notice to End Tenancy. The balance of the tenant's application is dismissed, with leave to reapply.

In a case where a tenant has applied to cancel a notice Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence and submission first, as the landlord has the burden of proving that the notice was issued for the reasons given on the Notice.

Issue to be Decided

Should the 2 Month Notice to End Tenancy issued on November 5, 2014, be cancelled?

Background and Evidence

The parties agreed that the tenant was served with a 2 Month Notice to End Tenancy for Landlord's Use of Property, issued on November 5, 2014. The reason stated in the notice was,

- The landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that required the rental unit to be vacant.

The landlord testified that the tenant is the only renter that is not on a fixed term tenancy and because of that and the fact that he has workers available and the crew is running out of work they would like to make cosmetic repairs to the rental unit that the tenant is currently occupying.

The landlord testified that although he has not been inside the tenant rental unit, he expects the repairs to be consistent with other units which required replacing the kitchen cabinets; new carpeting; painting and changing the closet. The landlord stated none of these repairs require permits by law.

The tenant testified that the landlord has not issued the notice in good faith. The tenant stated the landlord issued the notice only because he refused to sign a new tenancy agreement which would increase the rent. Filed in evidence are copies of the new tenancy agreements.

The tenant testified that his current rent is \$627.00 and when the landlord listed the property for sale the rent roll indicated that the potential rent for his rental unit was at \$975.00, and the market rent was at \$1,400.00. Filed in evidence is a copy of the income and expense report form, with attached rent roll documents.

The tenant testified that is he has rented the premises for 22 years and there has never been any maintenance of the rental unit during that time period except for the bathroom. The tenant stated the rental unit has never been painted in the 22 years he had lived there and the carpets were old when he took possession of the rental unit. The tenant stated the landlord simply wants to evict him so he can get a higher rent.

The tenant testified that he will accommodate the landlord in a way he can in order for the repairs to be completed, and if necessary he can book a holiday to help accommodate the process.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

When a tenant has filed to cancel a notice to end tenancy for landlord's use and calls into question the "good faith" requirement, the onus lies on the landlord to prove the two-part test as follows:

- The landlord must truly intend to use the premises for the purposes stated on the notice to end tenancy; and
- The landlord must not have another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive for ending the tenancy.

In this case, the premise needs maintenance as very little maintenance had been completed to the rental unit in the 22 years that it has been occupied by the tenant.

However, I find the repairs the landlord has indicated are simply cosmetic and do not require vacant possession of the rental unit. The tenant has agreed that he will accommodate the landlord in order for the repairs to be completed and will even take a holiday if needed.

I also note in the income and expenses report filed in evidence, in the note portion of the document it reads in part,

“**Nearly all tenants are or soon will be on one year leases, allowing rents to be increased to market rates on the anniversary of the lease.

[Reproduced as written.]

I find it highly likely that the landlord had an ulterior motive for ending the tenancy as the evidence support that the landlord present two fixed term tenancy agreements which the tenant refused to sign. These agreements contained a clause that at the end of the tenancy, the tenant must move out of the apartment or sign a new lease agreement. The new tenancy agreement would allow the landlord to increase the current rent of \$627.00 to the market rent of \$1,400.00, should the tenant wish to continue the tenancy.

Based on the above, I find the landlord has not met the two-part test. Therefore, I grant the tenant's application and cancel the 2 Month Notice to End the Tenancy for Landlord's Use of Property, issued on November 5, 2014. The tenancy will continue until legally end in accordance with the Act.

Conclusion

The tenant's application to cancel the 2 Month Notice to End Tenancy for Landlord Use of Property is granted. The tenancy will continue until legally ended in accordance with the 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: January 08, 2015

Residential Tenancy Branch

