



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL, FF
 CNL

Introduction

This hearing was convened by way of conference call concerning applications filed by the landlords and by the tenants. The landlords have applied for an Order of Possession for landlord's use of property and to recover the filing fee from the tenants for the cost of the application. The tenants have applied for an order cancelling a notice to end tenancy for landlord's use of property.

Both landlords and both tenants attended the hearing, and the landlords were assisted by an agent. One of the landlords and both tenants gave affirmed testimony. The parties were given the opportunity to discuss settlement of this dispute, and were given the opportunity to question each other about the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

Issue(s) to be Decided

- Are the landlords entitled under the *Residential Tenancy Act* to an Order of Possession for landlord's use of property?
- Should the 2 Month Notice to End Tenancy for Landlord's Use of Property be cancelled?

Background and Evidence

The landlord testified that this month-to-month tenancy began on August 1, 2006 and the tenants still reside in the rental unit. Rent in the amount of \$750.00 per month is payable in advance on the 1st day of each month and there are no rental arrears. The landlords also hold a security deposit in trust in the amount of \$400.00.

The landlord further testified that on January 23, 2015 the tenants were served with a 2 Month Notice to End Tenancy for Landlord's Use of Property by registered mail. A copy of the notice has been provided and it is dated January 23, 2015 and contains an expected date of vacancy of April 1, 2015. The reason for issuing the notice is: "The rental unit will be occupied by the landlord or the landlord's spouse or a close family

member (father, mother, or child) of the landlord or the landlord's spouse.” The tenant told the landlord that it had been received by the tenants on January 29, 2015.

The landlord also testified that the landlords reside in a different community than the rental unit, but have always had the intention to move onto the rental property upon retiring. An appraisal on the landlord's existing residence was done by a realtor last year but the home was not put up for sale at that time due to health reasons of one of the landlords. The recovery period is almost done and the landlords wish to put up the home for sale and relocate to the community where the rental unit is located. The intent is to refresh the rental unit after the tenants move out by painting and cleaning. The landlords already have a container ready to be shipped and the landlords are ready to go and have started packing. The realtor told the landlords that housing sales in the area have increased dramatically and it will only take about 2 weeks to sell the home. The landlords do not wish to be in-between homes, and whether or not their home sells, the landlords still intend to move into the rental unit.

The first tenant testified that the tenants do not feel the landlords have been acting in good faith and that the notice to end the tenancy was issued in response to the tenants' emailed request for monetary compensation. Further, copies of emails provided for this hearing that had been exchanged between the parties show that the landlords were intending to move to the rental unit next year sometime.

The second tenant testified that as a result of damages the tenants suffered with respect to flooding in the rental unit, the tenants had asked the landlords for compensation in the amount of 3 months rent. The landlords refused, and the tenants reduced the request to 1 months rent. The discussions progressed to the point where the tenants filed an Application for Dispute Resolution because the landlords refused to accept any responsibility. The tenant conducted some research and found that the tenants should provide a detailed accounting to the landlords and the tenants did. The next day, the landlords issued the notice to end the tenancy. The tenants do not believe the decision to move to the rental unit was made that day and it looks very suspicious. The landlords have not yet listed their current residence for sale and there has been no activity around the rental unit or the cabin on the rental property to indicate a move, although someone was there but the tenant is not sure why.

Analysis

The *Residential Tenancy Act* states that a landlord may end a periodic tenancy if the landlord intends in good faith to occupy the rental unit. Although I accept the tenants' testimony that the notice was served on the heels of the tenants' request for monetary compensation, I am not satisfied that the landlords don't have the honest intent to move into the rental unit. The parties agree that it was mentioned at the outset of the tenancy, however the landlord's health prevented the move earlier than now. It may be that the landlords didn't make the decision to move until after the tenants applied for monetary compensation, however that is not the test. The landlords must satisfy me that they have the honest intent to move into the rental unit within a reasonable time after the

tenancy ends. There is nothing in the evidence before me that would cause me to believe that the landlords do not intend to move in.

I have reviewed the 2 Month Notice to End Tenancy for Landlord's Use of Property and I find that it is in the approved form and contains information required by the *Act*.

The tenants' application is hereby dismissed. I hereby grant an Order of Possession in favour of the landlords effective April 1, 2015.

Since the landlords have been successful with the application the landlords are also entitled to recovery of the \$50.00 filing fee. The landlords have not yet provided the tenants with the compensation they are entitled to, being the equivalent of one months rent, and I order the landlords to withhold \$50.00 of that compensation as recovery of the filing fee.

Conclusion

For the reasons set out above, the tenants' application is hereby dismissed.

I hereby grant an Order of Possession in favour of the landlords effective April 1, 2015 at 1:00 p.m. and the tenancy will end at that time.

I order the landlords to withhold \$50.00 of the compensation equivalent to one months rent that the tenants are entitled to receive, as recovery of the filing fee.

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: March 11, 2015

Residential Tenancy Branch

