



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF

Introduction

This is an application by the tenants filed under the Residential Tenancy Act (the “Act”), to allow a tenant more time to make an application to cancel a Notice to End Tenancy, and to cancel a Notice to End Tenancy for Landlord’s Use of Property (the “Notice”), issued on March 16, 2015.

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 at the hearing.

Preliminary Matter

At the outset of the hearing the tenants indicated that the respondent EL is not their landlord and that EL had no rights under the Act to issue the Notice.

The tenants testified that they rent the basement unit and their landlord IU resides in the main portion of the house.

The tenants testified that the respondent EL is the ex-spouse of their landlord IU and has not lived on the property since July 1, 2013 and does not live in the province. The tenants stated that the owners have signed a separation agreement, which gives IU the exclusive rights to the property. Filed in evidence is a copy of the separation agreement dated 12 August 2013.

The tenants testified that the respondent has threatened and harassed their landlord IU, and this Notice is simply an attempt to push IU to finalise their divorce proceeding. Filed in evidence is a copy of an email dated April 3, 2015.

IU, appeared as witness for the tenants and testified that they are the landlord and have exclusive possession of the premises under their separation agreement. The witness stated that their divorce proceeding has been filed in the Supreme Court; however, a date has not been scheduled.

The respondent EL testified that they want to move back into the basement to save money as their current rent is over 70% of their pension.

I have reviewed the separation agreement. The agreement indicates that the parties intend to continue to live separate and apart and each shall be free from interference, authority and control by the other as if each were unmarried. The agreement also indicates that the parties intend the terms of the agreement to be a final settlement of their respective rights to the property.

Clause 19 of the agreement states,

“Upon signing of this agreement, Party 1 [UI] shall be solely responsible for repairs and maintenance to the matrimonial home, pay the mortgage, maintain all taxes, insurance, heat, water, and other charges, and keep the matrimonial home fully insured and will indemnify Party 2 [EL] from all liability relating to these expenses.”

[Reproduced as written]

I have reviewed the email written by EL to UI, dated April 3, 2015. The email in part reads,

“I would like to inform you that “Notice to Vacate” is just a **first step in a war I declare on you**. I will move in with my new girlfriend and her two teenage kids. Guarantee that you will have a lot of fun, as we plan to start major renovations work downstairs, day and night. **Put police number on a speed dial** as you did with your own son!”

...

“I am not threatening you, I am giving you one week notice to **settle the divorce**.”

[Reproduced as written]
[My emphasis added]

In this case, I do not accept that the respondent EL is the landlord. Although EL is on the title of the property, the written separation gives IU exclusive possession of the property and the responsible for the property remains with IU. There is no evidence that the agreement has been changed by consent or by a Supreme Court Justice.

Further, I find the email dated April 3, 2015, to be threatening and harassing in nature, and is clearly an attempt to interfere with the rights of IU in order to expedite their divorce proceedings.

In the alternative, even if EL is a landlord under section 49 of the Act, there is a requirement to act in good faith when ending a tenancy for these reasons. It is clear to me based on the above email that EL has not issued the notice in good faith and instead has an ulterior motive to end the tenancy. This alone is reason to cancel the Notice

In any event, I find the respondent EL is not a landlord under the tenants' tenancy agreement, until otherwise decided by a Supreme Court Justice. Therefore, I find the respondent EL had no jurisdiction to issue the Notice.

Therefore, I find the Notice issued on March 16, 2015, is not valid and has no force or effect as I have determined the respondent EL is not the landlord.

Conclusion

The tenants' application to cancel the Notice is granted.

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: May 14, 2015

Residential Tenancy Branch

