



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF

Introduction

The tenant applies to cancel a two month Notice to End Tenancy “for landlord use of property” dated and served March 30, 2015.

The Notice alleges that the rental unit will be occupied by the landlord or the landlord's spouse or a close family member of the landlord or his spouse. That reason is a permitted reason for a landlord to end a tenancy under s. 49(3) of the *Residential Tenancy Act* (the “Act”).

Issue(s) to be Decided

Does the relevant evidence presented at hearing show on a balance of probabilities that the landlord has a good faith intention to carry out the stated purpose given in the Notice?

Background and Evidence

The rental unit is a two bedroom apartment, one of two rental units located above a commercial premises.

The tenancy started August 1st 1994. The current monthly rent is \$722.00 and the landlord holds a \$340.00 security deposit.

The landlord testifies that he and his wife purchased the entire building in January 2015 intending to use the commercial portion for the landlord's accountancy practice. He says that he has realized that he needs more space. It is his intention to convert the rental unit in question into a storage area for his practice and possibly as a lunch room and kitchen for his staff.

The landlord has also arranged for the tenant of the second residential suite to move out.

The tenant testifies that before the landlord purchased the building he informed him that he intended to renovate the rental units and obtain a higher rent. He says the landlord indicated to him at another time that he intended to reside there.

The tenant notes that the Notice he received had not been signed by anyone. The copy of the Notice the tenant filed does not bear a signature.

Analysis

The ending of a tenancy is a very serious matter. It involves the forced relocation of a person from his or her home. A landlord proposing to end a tenancy will be put to strict compliance with the law that permits him to do so.

Section 52 of the *Act* provides:

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

The landlord's failure to sign the Notice is a failure to comply with the mandatory requirement of s.52 and renders the Notice of no effect. For that reason I cancel the Notice.

Section 49(3) of the *Act* is the provision under which this Notice was given. It provides:

- (3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Standing alone that provision may appear to permit a Notice to be given whenever the landlord intends to occupy a rental unit for any purpose, including a non-residential purpose.

However, s. 49(3) must be read in conjunction with s. 49(6), which provides:

- (6) A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:
- (a) demolish the rental unit;
 - (b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant;
 - (c) convert the residential property to strata lots under the Strata Property Act;
 - (d) convert the residential property into a not for profit housing cooperative under the Cooperative Association Act;
 - (e) convert the rental unit for use by a caretaker, manager or superintendent of the residential property;
 - (f) convert the rental unit to a non-residential use.**

(emphasis added)

When read together, the type of occupation referred to in s. 49(3) must mean residential occupation. The landlord's proposed occupation of the tenant's suite for a non-residential use does is not a good ground for ending a tenancy under s. 49(3). That subsection refers to an intention to occupy the premises for residential purposes.

For this reason as well, I cancel the Notice.

Conclusion

The tenant's application is allowed. The two month Notice to End Tenancy dated March 30, 2015 is hereby cancelled. The tenant is entitled to recover the \$50.00 filing fee for this application. I authorize him to reduce his next rent due by \$50.00 in full satisfaction of the 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: May 26, 2015

Residential Tenancy Branch

