



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNL DRI OLC

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To cancel a notice to end tenancy for landlord's use of the property pursuant to section 49;
- b) An Order that the landlord comply with the Act;
- c) To dispute an additional rent increase; and
- d) To recover the filing fee for this application.

Service:

The Notice to End Tenancy is dated May 31, 2015 to be effective July 31, 2015 and the tenant confirmed it was served personally on them. The tenant /applicant gave evidence that they served the Application for Dispute Resolution by registered mail on June 11, 2015; it was verified online as successfully delivered. I find the documents were legally served for the purposes of this hearing.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that they need in good faith to end the tenancy in order to have the property for their own use or is the tenant entitled to any relief? Is the landlord entitled to an Order of Possession if the tenant is unsuccessful in the application?

Has the tenant proved on the balance of probabilities that the rent has been illegally increased contrary to sections 42 and 43 of the Act?

Background and Evidence

Only the tenant attended the hearing and was given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced September 2013, rent was \$1200 a month and is now \$1225 and a security deposit of \$600 was paid. The landlord served a Notice to End Tenancy stating

that the rental unit would be occupied by the landlord or the landlord's spouse or a close family member of them.

The tenant requests that the Notice be set aside and cancelled as it was issued in bad faith and they do not believe the landlord or a close relative will occupy their suite. They said the landlord bought the home and they continued as tenants under him as a new landlord. He tried to increase the rent twice, once to \$1500, then to \$1300 and when they refused to accept it and pointed out the sections of the Act governing rent increases, he was upset and complained about his high mortgage payment and said their rent was below market value. They believe he hopes to evict them and then re-rent at a higher rate for he talks of doing some kitchen renovations.

They said that when they pointed out the provisions in section 49, he jokingly said that maybe his brother would move in. They said that there have been no requests to view the unit by a brother.

In September 2015, their rent was raised to \$1225 a month after the requisite 3 month notice so they are not objecting to that as they believe it is within the legislated guidelines.

Included with the evidence are a copy of the Notice to End Tenancy, a statement of the tenants, emails regarding rent increases, the Notice of Rent Increase and the tenancy agreement. The landlord provided no documents in support and did not attend the hearing.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

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Analysis:

The onus is on the landlord to prove on a balance of probabilities that they in good faith need the unit because they or a close family member intend to occupy the unit.

I find the tenant disputed the Notice to End Tenancy on June 8, 2015 so within the legislated time limit to dispute. I find the evidence of the tenant credible that the landlord is not exercising good faith in serving the section 49 Notice to End Tenancy as I find insufficient evidence that the landlord or a close family member intends to occupy the unit. I find no evidence to support the section 49 Notice whereas I find the efforts of the landlord to twice increase the rent illegally support the tenants' evidence that the landlord was trying to end the tenancy to get a higher rental rate. For the above reasons, I set aside and cancel the Notice to End Tenancy.

Conclusion:

The Notice to End Tenancy dated May 31, 2015 is set aside and cancelled. The tenancy continues. I find the tenant entitled to recover the \$50 filing fee.

I HEREBY ORDER THAT the tenant may recover the \$50 filing fee by deducting it from their rent.

I HEREBY ORDER THAT the landlord obey sections 41, 42 and 43 of the Act and raise the rent only once a year, give three months notice of the increase and only increase it within the legislated guidelines.

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: July 30, 2015

Residential Tenancy Branch

