



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, LRE, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for an order cancelling a notice to end a tenancy for landlord's use of property, for an order suspending or setting conditions on the landlord's right to enter the rental unit, and to recover the filing fee from the landlord for the cost of the application.

The tenant and the landlord attended the hearing, and each gave affirmed testimony. The landlord also called 2 witnesses who gave affirmed testimony.

The landlord was also accompanied by 2 other people who were introduced as people to assist the landlord. During the course of the hearing, one of the witnesses, who attended the hearing late, disrupting testimony, accused me of causing the landlord to suffer a heart attack. Upon questioning the current condition and health of the landlord further, the witness stated that the landlord was likely to suffer one in the future. The witness also accused me of refusing to allow one of the landlord's support people to act as agent for the landlord, however no such request had been made. The support people both stated that they would not be testifying but were assisting the landlord and were permitted to remain in attendance, but at no time did the landlord or either of the support people advise me that the intent was to act as agent.

The parties were given the opportunity to question each other and the witnesses with respect to the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

- Has the landlord established that the notice to end the tenancy was given in accordance with the *Residential Tenancy Act*?
- Has the tenant established that the landlord's right to enter the rental unit should be suspended or subject to conditions?

Background and Evidence

The landlord testified that this month-to-month tenancy began about 7 years ago and the tenant still resides in the rental unit. Rent in the amount of \$600.00 per month is payable on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$250.00 which is still held in trust by the landlord, and no pet damage deposit was collected.

The landlord further testified that the rental unit is a basement suite, and the landlord currently resides in the upper level of the home. The landlord has sold the rental unit and the purchaser has asked for vacant possession. The landlord's realtor served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use of Property on June 8, 2015 at the rental unit in the presence of the landlord. A copy of the notice has been provided and it is dated June 8, 2015 and contains an effective date of vacancy of August 31, 2015. The reason for issuing the notice is:

- All of the conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.

The landlord also testified that a letter dated June 22, 2015 addressed to the tenant was given to the tenant, and the landlord read the letter during the course of her testimony: "June 22, 2015 To the Tenant: I am the new buyer of the property and I confirm that I do not want a tenant. I have instructed the current owner to present you with the proper documents so I will have vacant possession of the property prior to completion."

September 3, 2015 is the completion date and the buyer told the landlord that the buyer intends to occupy the whole house and is not going to rent out the basement suite. The buyer also met with the tenant and told the tenant that the buyer wishes to occupy the entire home and does not want a tenant.

The landlord further testified that about 2 years ago the landlord gave the tenant a notice to end the tenancy because the landlord wanted to renovate the suite, but that notice was cancelled because the tenant complained that he couldn't find another home. The landlord is elderly and cannot manage the house anymore and has decided to sell.

The landlord's first witness testified that he is a friend of the landlord. The witness has his own house and has resided there for 2 years and 8 months, and has no intention of renting the rental unit from the purchaser.

The witness was with the purchaser as a witness to giving the tenant a letter stating that the purchaser wants the whole house for herself. The witness has a copy of the letter dated June

22, 2015 and read it during his testimony. The witness also testified that the purchaser told him that she wants the whole house and will not be renting it to anyone.

The witness denies ever signing an offer to purchase the rental property.

The landlord's second witness is the listing agent for the home and was told by the landlord that the tenant didn't want to move out.

The witness was also present when the letter of June 22, 2015 was given to the tenant, and the witness tried to help the tenant find another place to live. Another unit was found, but the tenant refused it.

The witness further testified that the purchaser does not wish to have any tenants and the letter of June 22, 2015 states: "...I confirm that I do not want a tenant," means that the purchaser intends to occupy the entire house. The house is small and has 2 bedrooms in the upper level where the landlord lives, and 1 bedroom in the rental unit.

The tenant testified that he received the notice to end the tenancy but should not have to vacate. The tenant believes the purchaser will rent it out to someone else who is not a close family member.

The tenant requests that the notice to end the tenancy be cancelled.

The tenant also testified that the landlord enters the rental unit whenever she wants.

Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was issued in accordance with the *Residential Tenancy Act*, which can include the reasons for issuing it. I have reviewed the notice, and I find that it is in the approved form and contains information required by the *Act*. The reason for issuing the notice is in dispute.

Although I have not received a copy of the June 22, 2015 letter from the purchaser, the landlord and both witnesses independently testified as to its contents. There is no dispute that the tenant received that letter, and I agree with the landlord's witness that although the wording doesn't specifically state that the purchaser intends to occupy the rental unit, it does state that the purchaser does not wish to have a tenant and that means that the purchaser intends to occupy the entire home. In the circumstances, I am satisfied that the purchaser intends in good

faith to occupy the rental unit, and the tenant's application to cancel the notice to end the tenancy is dismissed.

With respect to the tenant's application for an order suspending or setting conditions on the landlord's right to enter the rental unit, the tenant testified that the landlord enters whenever she wants. There is no evidence of that. The *Act* states that a landlord may enter if a tenant allows entry at the time. A rental unit is a home of the tenant and there is a big difference between entering illegally and entering after knocking and the tenant answering the door. I am not satisfied that the tenant has established that the landlord entered the rental unit without knocking first and obtaining the tenant's permission to enter.

The tenant's application is dismissed in its entirety without leave to reapply.

The *Act* also states that where a landlord's notice to end a tenancy is upheld or a tenant's application to cancel such a notice is dismissed, the landlord may make an oral request for an Order of Possession. The landlord and the landlord's witnesses and support personnel were given plenty of opportunity to make such a request, but none was made.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed in its entirety without leave to reapply.

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: August 11, 2015

Residential Tenancy Branch

