



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, O, FF

Introduction

The tenants apply to cancel a two month Notice to End Tenancy for landlord use of property dated June 29, 2015.

The Notice claims that 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.

Such a ground, if established at this hearing, is a valid ground for ending a tenancy under s.49 of the *Residential Tenancy Act* (the "Act").

Issue(s) to be Decided

Does the relevant evidence presented during the hearing show on a balance of probabilities that the landlords have given the Notice in good faith?

Background and Evidence

The rental unit is a two bedroom basement suite below the landlords' home. There is a second, one bedroom suite in the basement, rented to others.

There has been a previous hearing between these parties in which the tenants successfully applied to cancel a one month Notice to End Tenancy for cause. The landlords had failed to indicate a ground for that Notice and so it was cancelled.

At this hearing the landlord Mr. B. testifies that his niece was arriving for a two year visit (she arrived two weeks ago). She will stay with the landlords in the upstairs and so it was his intention to move his parents, who both live upstairs with him, into the tenants' two bedroom suite.

The tenant Mr. O. testifies that the neighbouring one bedroom suite has been vacant twice since June and re-rented by the landlord. He says the landlords could have used that suite.

He says that they want to evict him because he has a dog. He indicates that the landlord Ms. B. told him during a walk through inspection on May 7, 2015 that she needed his suite for a cousin. He adduces an audio recording from that meeting which indicates the landlords saying that he had to move the dog; that if he wanted to stay, “the only problem is the dog...”

The evidence shows that at the previous hearing on June 25, 2015, four days before the Notice in question here was issued, the landlord Ms. B. had indicated that it was her intention to move a single family member into the rental unit. I quote from the decision in that hearing:

A.O. testified that the Landlord had informed him that she wished to move a family member into the rental unit. The Landlord confirmed this was her intention.

Analysis

The landlords have not provided any evidentiary material for this hearing, nor any other detail about the family member or members intended for the tenants' suite. The tenants have come to this hearing without knowing that the landlords would assert that it is their intention for the landlord Mr. B.'s parents to live in the suite.

It may be that the landlords have a good faith intention to have Mr. B.'s parents reside in the tenants' suite, but the tenants have not been given a fair opportunity to investigate and defend themselves from that assertion. The tenants did not know the details of the grounds for the Notice until this hearing.

When a landlord issues a Notice to End Tenancy and when that Notice is challenged by the tenant, the initial burden of proof is on the landlord to show that there are good grounds for the eviction. It is incumbent on a landlord to provide to tenant, in a timely fashion, details of the case the tenant is expected to meet so that the tenant can investigate and prepare his or her defence. That is an essential element of all adjudicative proceedings.

In this case the grounds alleged by the landlords; that Mr. B.'s parents would be moving in, were not relayed to the tenants before this hearing and so I find that evidence relating to that ground is not, in fairness, admissible in this proceeding.

For that reason I allow the tenants' application and cancel the two month Notice to End Tenancy.

To be clear, I make no determination about whether or not the landlords have a good faith intention to have Mr. B.'s parents occupy the rental unit. The landlords are free to issue another Notice. If it is challenged by the tenants, the landlords will be expected to provide the tenants with particulars of the grounds of that Notice within the time limits for trading and submitting evidence imposed by the Rules of Procedure.

Conclusion

The tenants' application is allowed. The two month Notice to End Tenancy dated June 29, 2015 is cancelled.

I award the tenants recovery of the \$50.00 filing fee and authorize them to reduce their 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: September 15, 2015

Residential Tenancy Branch

