



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF

Introduction

This hearing dealt with an application by the tenant seeking to have a 2 Month Notice to End Tenancy for Landlord's Use of Property set aside. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

Issues to be Decided

Is the tenant entitled to have the Notice set aside?

Background and Evidence

The tenancy began on or about August 15, 2009. Rent in the amount of \$1250.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$450.00.

The landlords' agent gave the following testimony:

The agent stated that she issued a Two Month Notice to End Tenancy for Landlords Use of Property on July 23, 2015 with an effective date of September 30, 2015. The agent stated that the landlord wishes to use the house when he comes to Canada to visit. The agent stated that the landlord lives overseas and will be coming to stay more often. The agent stated that the tenancy agreement clearly outlines that the landlord offered the tenants a reduced rent to compensate them for his impending move into the home.

The tenants gave the following testimony:

The tenants stated that they feel the notice is “unfair”. The tenants stated that the landlord lives in Saudi Arabia and comes to Canada once per year for a one month stay. The tenants stated that several years ago they were forced to move out for one month by the landlord while he visited Canada. The tenants stated that the landlord asked the tenants to move out again for a month this past summer. The tenants stated that when they declined to move, the landlord became angry and had the agent issue a notice to end the tenancy and they don't feel the landlord is acting in good faith. The tenants stated that the home is essentially a vacation home for one month a year for the landlord and doesn't believe he will be moving into it as stated.

Analysis

When a landlord issues a notice to end tenancy, they bear the burden of providing sufficient evidence to support the issuance of that notice. The tenants have called into question the landlords good faith as to whether he will be occupying the home. The agent stated that the tenancy agreement is clear that the landlord entered into this tenancy knowing full well the landlord would be taking back possession of the unit when he decided to move in; however, neither party has submitted a copy of the tenancy agreement. The tenants stated that no such arrangement was made and that no such agreement was signed.

The landlords' agent did not provide any documentation that reflected the arrangement as she stated on several occasions during the hearing. In addition, when asked as to the length or frequency the landlord plans to visit and stay, she was unable to provide any information. Based on the landlords' agent unable to provide documentation and clear concise testimony as to the landlords' plans, I hereby dismiss the notice.

The notice is of no effect or force.

As the tenant has been successful in this application they are entitled to the recovery of the \$50.00 filing fee. I order a onetime rent reduction of \$50.00 from the next rent payable.

Conclusion

The notice is set aside. The tenancy continues.

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: October 05, 2015

Residential Tenancy Branch

