



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution wherein the Tenant sought to cancel a Notice to End Tenancy issued for Cause on September 24, 2015 (the "Notice").

Both parties appeared at the hearing. The Landlord M.T. was assisted by his son, D.T. M.T. advised that the other named Landlord, S.T. was deceased. The Tenant was assisted by her friend C.F. The hearing process was explained and the participants were asked if they had any questions.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

Residential Tenancy Branch Rules of Procedure Rule 11.1 provides that when a Tenant applies to set aside a Notice to End Tenancy, the respondent Landlord must present their case first as the Landlord bears the burden of proving the Notice should be upheld.

Issue to be Decided

1. Should the Notice be cancelled?

Background and Evidence

Both M.T. and D.T. testified on behalf of the Landlord. Neither M.T. nor D.T. could advise as to when the tenancy began. D.T. stated that monthly rent was payable in the amount of \$900.00. From their answers it appeared as though no written tenancy agreement existed.

D.T. testified that M.T. personally served the Notice on the Tenant on September 24, 2015. The reason cited in the Notice is as follows: "the rental unit/site must be vacated to comply with a government order" (the "Notice").

Section 47 (f) provides that a tenant may dispute a notice to end tenancy for cause by making an application for dispute resolution within 10 days after the date the tenant receives the notice. The Tenant made her application for dispute resolution on September 30, 2015 such that she applied within the required timeline.

Introduced in evidence by the Landlord was a document from the municipality in which the rental unit is located, titled "Building Approvals Division Site Visit Notice: Building Check". The owner of the property is not noted however the street address of the rental unit is included. The document also notes a "Permit No: 15 699457". The following is handwritten on the document:

- 1) Remove all locks on interior doors between floors.
- 2) Only one kitchen per unit permitted.

The document is dated May 12, 2015 and has the initials W.B. as the "Inspector".

D.T. testified that the "Code Violation Team" attended the rental property and gave the Landlord, M.T., his "first notice" and told him the rental unit was not "legal". Apparently the municipality received a complaint about the rental suite.

When I asked M.T. to describe the rental property, he stated it was a duplex and he lived on the "other side". Neither M.T. nor D.T. were able to provide any information regarding whether there were other units within the rental property.

Further, M.T. and D.T. also could not provide any specific information regarding direction they received from the municipality, or whether other options existed other than ending the subject tenancy. D.T. stated he had "lots of papers", yet he did not provide any in evidence. When I asked if he was given any specific directions or orders with respect to the rental unit, D.T. was unable to provide an answer.

In her application for Dispute Resolution the Tenant alleged the Landlord had obtained building permits on May 5, 2015 and was intending to sell the property. The document provided by the Landlord seems to indicate that a building permit was obtained in May of 2015. It is unclear what the permit relates to.

After hearing from the Landlord I found it unnecessary to hear from the Tenant as it is the Landlord who bears the burden of proving the Notice should be upheld. Despite this, she did inform me that the rental unit is in a fourplex, not a duplex.

Analysis

The Landlord claimed that the rental unit must be vacated to comply with a government order. No evidence of such an order or clear direction from the government was provided in evidence. Further, the only communication provided in evidence by the Landlord from the municipality provides that locks must be removed and only one kitchen is permitted per unit. The Landlord was not able to provide evidence as to how many units were in the rental property, such that it is not clear how many kitchens were present or what steps are required to comply with any direction from the municipality.

I find there is insufficient evidence to find on a balance of probabilities that the rental unit must be vacated to comply with a government order. Without any corroborating evidence I am not able to find that the tenancy must end to comply with a government order. For the foregoing reasons, I grant the Tenant's request to cancel the Notice. The tenancy will continue until ended in accordance with the Act.

Conclusion

The application is granted and the Notice is set aside.

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: December 01, 2015

Residential Tenancy Branch

