



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Prospero International Realty Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, FF

Introduction

This hearing dealt with an application by the tenant seeking to have a Two Month Notice to End Tenancy for Landlords Use of Property set aside. Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issues to be Decided

Is the tenant entitled to have the Notice set aside?

Background and Evidence

The tenancy began about 12 years ago. Rent in the amount of \$250.00 is payable in advance on the first day of each month. The tenant stated that due to his low rent the landlord is seeking to evict. The tenant stated that the landlord could just have easily picked another unit to have a resident caretaker reside in. The tenant stated that other units have come available that the caretaker could have moved into, or alternatively, been offered to himself. The tenant stated that he feels the notice is “unfair”, feels discriminated against, and doesn’t think the landlord is acting in good faith. The tenant stated that he is 82 years old, in poor health and has mobility issues.

The landlord gave the following testimony. The landlord stated that the new owners took possession of the property on October 13, 2015. The landlord stated that there are 58 units in the building. The landlord issued a Two Month Notice to End Tenancy for Landlords Use of Property on October 27, 2015 with an effective date of December 31, 2015. The landlord stated that the notice was issued on the basis that "The landlord intends to convert the rental unit for use by a caretaker, manager, or superintendent for the residential property.

The landlord stated that the subject unit has an ideal vantage point that overlooks much of the property including the main entrance. The landlord stated that the only unit that has come available since they took over the property was a two bedroom ground floor unit that would have been substantially more money per month. The landlord stated that he sympathizes with the tenants' situation and would make some attempts to assist the tenant outside of this hearing. The landlord stated that regardless of which unit he issues a notice to, someone will be unhappy. The landlord stated that he is acting in good faith and that he should be granted the order of possession.

Analysis

The tenant has submitted that the landlord is acting in this matter because his rent is \$250.00 per month and that proves he is not acting in good faith. If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive to end the tenancy. The landlord had the caretaker give testimony that confirms her employment and that she is just waiting to move into the unit to start her position. The landlord also provided documentation that reflects this arrangement including terms of the employment.

Based on the above, the landlord has satisfied me that they intend to do what they have stated on the notice and that there is no ulterior motive to do it.

The tenant has not been successful in his application.

The Notice remains in full effect and force. The tenancy is to end. However, taking into account the tenants age, his health issues, his long tenure in the building, his limited resources in the community, and in the absence of any issues with this tenant over his twelve years, I find that the tenancy is to end on February 29, 2016. I find that under these extraordinary circumstances that there would be no prejudice to the landlord in having the order of possession take effect on that date.

Conclusion

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

The landlord is entitled to an order of possession.

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: January 04, 2016

Residential Tenancy Branch

