



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

This hearing dealt with the tenant's application for dispute resolution, seeking to cancel a notice to end tenancy issued by the landlord for the landlord's use of property.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Issues(s) to be Decided

Has the landlord validly issued the notice to end tenancy and does the landlord intend, in good faith, to have a close member of his family move into the rental suite?

Background and Evidence

The tenancy started on February 01, 2012. The monthly rent is \$1,500.00. The rental unit is located in the basement of the rental home. The upper suite is rented out separately to a family with children.

The tenant stated that since the start of tenancy almost four years ago, there were no problems with the occupants of the upper unit. However, since the current occupant moved in, there have been many issues with both parties complaining against each other to the landlord. The upper occupant complained of multiple visitors, noise and smoking by the tenant inside the rental unit. The tenant complained of excessive noise by the children of the upstairs occupant.

On November 18, 2015, the situation came to a head and there was an argument between the upper occupant and the tenant, by telephone. Later that day the landlord visited the rental unit and a discussion took place. On November 18, 2015, the landlord returned with a notice to end tenancy for landlord's use of property. Neither party filed a copy of the notice to end tenancy.

The landlord indicated that his parents would be coming from China and he wanted them to occupy the rental unit. The landlord testified that the permanent resident card of his parents needed to be renewed and that they would need to be present in Canada to do so. The landlord was not sure of the expiry date of the permit. He stated that he found out from friends that the renewal takes about one year to be processed. The landlord did not provide any documentary evidence to support his testimony.

The tenant stated that the landlord never mentioned this possibility before the disagreements between the landlord and himself and the upper occupant and himself, took place. The tenant also stated that the landlord could accommodate his parents in his own home or in the basement suite of his own home that was rented out.

The landlord agreed that he rented out a basement suite in his own home but stated that his parents preferred to live on their own.

Analysis

When the tenant alleges bad faith on the part of the landlord, the landlord has an onus to prove he is acting in good faith. Based on the testimony of both parties, I make the following findings:

1. The tenant has occupied the unit for more than three years with no problems between himself and the upper occupants, prior to the current one.
2. The problems started with the most recent occupant of the upper suite
3. Heated discussions took place on November 18, 2015 after which the landlord served the tenant with a notice to end tenancy for landlord's use of property
4. The landlord was not sure of the details of the permanent resident card which was the alleged reason for the notice to end tenancy
5. The landlord did not file evidence to support his reasons for the notice

Based on the evidence in front of me and the testimony of the parties, I find that the notice was served after arguments between the tenant, the landlord and the occupant of the upper unit. In addition, the landlord was unable to provide details of the expiry date of the permanent resident card which was the alleged reason for the notice.

Therefore I find that on a balance of probabilities, it is more likely than not that the landlord did not act in good faith when he served the tenant with the notice to end tenancy for landlord use of property.

For these reasons I must set aside the notice to end tenancy. The tenancy will continue on the original terms of the tenancy agreement.

Conclusion

The notice to end tenancy is set aside and the tenancy will continue as per the terms of the tenancy agreement.

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 15, 2016

Residential Tenancy Branch

