



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Omaxwell Realty Ltd - Property Management Division
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, O

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants for an order cancelling a notice to end the tenancy for landlord's use of property.

Both tenants attended the hearing accompanied by a Legal Advocate. An agent for the landlord company also attended, accompanied by an observer. The tenants opposed the presence of the observer, and a discussion was held with respect to the Rules of Procedure, and I ordered that the observer be permitted to remain in attendance but was not permitted to testify or take part in the proceedings.

Both tenants and the landlord gave affirmed testimony and the parties were given the opportunity to question each other with respect to the evidence provided by the tenants and testimony given by the parties, all of which has been reviewed and is considered in this Decision. The landlord has not provided any evidentiary material.

Issue(s) to be Decided

- Has the landlord established that the 2 Month Notice to End Tenancy for Landlord's Use of Property was issued in accordance with the *Residential Tenancy Act*?

Background and Evidence

The landlord's agent (the landlord) testified that this fixed term tenancy began on October 15, 2015 and expires on April 30, 2016, following which the term reverts to a month-to-month tenancy. The tenants still reside in the rental unit, and a copy of the tenancy agreement has been provided by the tenants. Rent in the amount of \$1,000.00 per month is payable on the 1st day of each month and there are no rental arrears. At

the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$500.00 as well as a pet damage deposit in the amount of \$300.00, both of which are still held in trust by the landlord. The rental unit is the upstairs portion of a house on rural property. The lower level was also tenanted, but is now vacant.

The landlord further testified that the tenants were personally served with a 2 Month Notice to End Tenancy for Landlord's Use of Property on November 12, 2015. The tenants have provided a copy and it is dated November 12, 2015 and contains an expected date of vacancy of January 31, 2015. The reason for issuing the notice states: "All of the conditions for sale of the rental unit have been satisfied and the purchaser has asked the landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit."

The new owner called the landlord on November 12, 2015 to advise that he or she was coming from over-seas to take possession, and was awaiting a Visa, and if it took too long, another family member would occupy the rental unit. The landlord does not know when the rental unit sold. When asked if the property is currently listed for sale for over \$900,000.00, the landlord replied that he does not know, and that he is not a realtor. The landlord just found out today that the purchaser's parents have moved into the basement which suggests very strongly that the property has sold.

The first tenant testified that the parties entered into the tenancy agreement in good faith for a fixed term of 6 months. The tenants are both on disability and it's difficult to find housing, so a fixed term is something the tenants were adamant about. The landlord told the tenants many times there would be no problems and that the home had been for sale for a long time, but was only willing to enter into a 6 month term and not a 1 year fixed term.

The second tenant testified that the tenants have been experiencing significant stress from this dispute. The tenant attends school, and received the notice to end the tenancy within a few weeks of moving in. The tenant found it to unconscionable. The tenants wanted a 1 year lease but negotiated 6 months with the landlord, and the tenancy agreement also specifies that after the 6 month term, it reverts to a month-to-month tenancy.

The tenant further testified that he left his previous 2 year tenancy early because the landlord pressured him to move into this rental unit on the 15th of the month or he would lose it. The tenant did so because this rental unit is closer to school. As a result, the tenant lost his security deposit from the previous rental unit.

The tenant also disputes that anyone is living in the basement suite and there's too much snow to drive up to the driveway.

Submissions

The parties each gave closing submissions, during which the landlord agreed to maintain and repair the electrical system, and I so order. The tenants request that the landlord send a licensed electrician rather than a handy-man, and the landlord opposed that request. I order the landlord to have a person who is qualified to assess the electrical systems within 2 days of receiving this order. If repairs are required, the landlord is ordered to make the repairs in such a manner that they comply with the standards required by law.

The tenants' advocate also orally requested, on behalf of the tenants, an Order of Possession of the rental unit. The landlord did not make an oral request.

Analysis

Where a notice to end a tenancy is disputed by a tenant, the onus is on the landlord to establish that it was issued in accordance with the *Residential Tenancy Act*. In this case, the landlord does not know when the rental unit sold and has not provided any evidence to establish that all conditions of the sale were satisfied before the notice to end the tenancy was given. There is absolutely no evidence before me to corroborate the landlord's testimony that it even sold. The tenants testified that it is still listed for sale. There is also no evidence that the purchaser has asked the landlord in writing to issue the notice because the purchaser intends in good faith to occupy the rental unit. These are all required elements that the landlord needs to establish, all of which are missing in the landlord's defence to the issuing the notice.

The tenants also submit that the tenancy agreement is for a fixed term ending on April 30, 2016 and have provided a copy. I refer to the Residential Tenancy Branch website which describes the difference between a fixed term tenancy and a periodic tenancy (underlining added):

- **Length of the tenancy:**
 - **Fixed-term** - A tenancy set for a specific period of time (e.g. a year, a month or a week). The tenancy cannot be ended earlier than the date fixed unless both parties agree in writing or are ordered by an arbitrator. A “move out” clause can be included requiring the tenant to move out on the date the agreement ends – both parties must have their initials next to this term in order for this to be enforceable. If the agreement doesn't say what happens at the end of the term, the tenancy

continues on a month-to-month basis and the tenant doesn't have to move out or sign a new fixed-term agreement

- **Periodic** - A tenancy with no specified end date – it continues until the landlord or tenant serve notice or both decide to end the tenancy. For example, a month-to-month tenancy

With respect to the tenants' request for an Order of Possession, again I refer to the website:

A tenant can follow the dispute resolution process to request an Order of Possession if the landlord locks them out, refuses to give them the keys to the property, or otherwise prevents their lawful access.

In this case, the tenants already have possession of the rental unit, and there is no evidence before me that their lawful access has been prevented, and I deny the application.

Conclusion

For the reasons set out above, the 2 Month Notice to End Tenancy for Landlord's Use of Property dated November 12, 2015 is hereby cancelled and the tenancy continues.

I order the landlord to have a person who is qualified, to assess the electrical systems inside and outside the rental unit within 2 days of receiving this order. If repairs are required, the landlord is ordered to make the repairs in such a manner that they comply with the standards required by law.

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 22, 2016

Residential Tenancy Branch

