



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OPL, FF

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for an order of possession pursuant to a notice to end tenancy for landlord's use of property and for a monetary order for the filing fee. The tenant applied to cancel the notice to end tenancy.

Both parties were represented by counsel. The parties 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.

The tenant stated that he had received a second package of the landlord's evidence on March 18, 2016 and had not had enough time to review the material. The tenant requested that this evidence which consists of three affidavits should not be considered in the making of the decision. Since the tenant did not have adequate time to review this portion of the landlord's submission, as requested by the tenant, it was not used in the making of this decision.

I have considered the remainder of the written evidence and oral testimony provided by the parties but have not necessarily alluded to all the evidence and testimony in this decision.

Issues to be decided

Has the landlord validly issued the notice to end tenancy and does the landlord or a close family member of the landlord intend, in good faith, to occupy the rental unit?

Background and Evidence

The tenancy started on August 01, 2012. The monthly rent is \$950.00 due on the first of each month. The rental unit consists of a two bedroom suite in the basement of the landlord's home. The landlord lives upstairs.

On January 19, 2016, the landlord served the tenant with a notice to end tenancy for landlord's use of property, with an effective date of March 31, 2016. The reason the landlord gave the notice to the tenant is described as, the rental unit will be occupied by the landlord or the landlord's spouse or a close family member of the landlord or the landlord's spouse. The tenant disputed the notice in a timely manner.

The tenant stated that the landlord has issued this notice in bad faith because he wants to end the tenancy for reasons other than wanting his son to occupy the rental unit. The tenant provided copies of prior notices to end tenancy for cause which were served on the tenant in 2015, on February 28, April 30, August 01 and August 31.

Two of these notices were disputed by the tenant and were heard by arbitrators. The notices were set aside as the landlord had not proven that the tenant had given the landlord sufficient cause to end the tenancy. The tenant stated that when the multiple notices failed to end the tenancy, the landlords resorted to a notice of this nature.

The landlord stated that he is now 80 years old and his health is declining. He stated that he fell off a ladder in December 2014 and has not climbed one since. He stated that both he and his wife are slowing down with age and would like to have their son live in the home with them.

The tenant testified that the landlords still engage in physical activity and filed photographs of the landlords raking leaves and cutting branches. The tenant also stated that he was a family friend and knew that the landlords did not have a good relationship with their son and that he rarely visited them even though he lives just a five minute drive away from them.

The tenant also stated that he was being discriminated against because there are two other suites in the home that the landlord could use for his son. The landlord replied that the two suites were occupied by long term tenants who had resided in them for at least thirty years.

The landlords' son testified at the hearing. He stated that he currently rented a suite in his cousin's home. He stated that on February 11, 2016, he had entered into a mutual agreement with his cousin (landlord) to end the tenancy effective March 31, 2016. The landlords' son testified that he intended to move into his parents' home to be close to them and assist them if necessary.

The landlords' son also stated that he wanted to spend more time with his parents, given that they were aging and that their health was on the decline.

Analysis

When the tenant alleges bad faith on the part of the landlord, the landlord has an onus to prove they are acting in good faith. I find that the landlord has filed evidence to support his testimony that he has health issues, has slowed down since his fall in December 2014 and that he would like to have his son live in home with him and his spouse.

The tenant argued that the landlord had made four prior attempts to end the tenancy for cause and when they all failed, he decided to use this as an excuse to end the tenancy. The tenant also stated that the landlords are in good health and still engage in physical activity.

I now have to decide whether the landlord acted in good faith when he served this notice and whether the landlords' son does truly intend to move into the rental unit.

Both parties agreed that the landlord fell off a ladder in 2014 and the tenant testified that he took good care of the landlord at the time of the accident, by calling 911 and staying by the landlord's side, until help arrived. The landlord testified that he has not climbed a ladder since and that his health was on the decline due to his advanced years.

The landlord clearly stated that he wanted his son to move into the suite in the basement of his home to help him and his wife with certain tasks, to assist them when they baby sat their grandchildren and to be present during any emergencies like the fall in 2014.

Based on the above; I find the landlords are advanced in age and have reason to want their son living in the same house as them. The landlords own the property and therefore are at liberty to choose any of the in home suites for their son. Based on the testimony of the landlords' son, I find that he intends to move into the rental unit and has already entered into a mutual agreement to end his tenancy with his current landlord.

Accordingly, I find that the landlords have met the good faith requirement of the legislation and intend to allow their son to move into the rental unit. Therefore, I find that the notice to end tenancy must be upheld and accordingly I dismiss the tenant's application to set it aside.

Pursuant to section 55(2) I am issuing a formal order of possession effective at 1:00 pm on March 31, 2016. The Order may be filed in the Supreme Court for enforcement.

Pursuant to section 55, without making application, the landlord could have requested to be granted an order of possession during the hearing, if the notice was upheld. The landlords chose to file their own application and therefore must bear the cost of filing their application.

Conclusion and Order

I dismiss the tenant's application and grant the landlord an order of possession effective at 1:00 pm on March 31, 2016.

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: March 22, 2016

Residential Tenancy Branch