



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF

Introduction

The tenant applies for an order cancelling a two month Notice to End Tenancy for landlord's use. The hearing was conducted by telephone conference call, and the tenant, the named female landlord, and the landlord's son all participated in the hearing. Both parties submitted and properly exchanged evidence regarding this application, and the parties present all provided testimony at the hearing.

Issue(s) to be Decided

Should the two month Notice to End Tenancy for landlord's use dated February 5, 2016 be cancelled, or is the notice valid to end the tenancy, entitling the landlord to an order of Possession?

Background and Evidence

The rental unit is one half of a duplex in Richmond. The tenancy began November 1, 1997. There have been previous dispute resolution proceedings regarding this tenancy, including a dispute over an illegal rent increase, a dispute over a claim for an additional rent increase, and a dispute over a prior two month Notice to End Tenancy given on October 26, 2015 for landlord's use. That previous Notice to End Tenancy was given on the basis that the landlord intended to occupy the premises. As significant renovations would be required before such occupation could occur, the previous Notice was ordered cancelled. Liberty was granted to the landlord to give the tenant another two month Notice to End Tenancy, but on the ground that the landlord has all necessary permits and approvals required by law to demolish the rental unit or repair the rental unit in a manner that requires the rental unit to be vacant. The current notice includes that reason for ending the tenancy, along with repeating that the landlord intends to reside in the premises.

Evidence was provided that the female landlord is the owner of the rental property. As confirmed by the written reports of her occupational therapist (December 10, 2015) and her personal physician (December 11, 2015), she suffers from a degenerative spinal condition and is partially paralyzed, she has reduced upper extremity strength associated with arthritis in her hands, and she requires an environment that is wheelchair accessible. The occupational therapist and doctor are of the opinion that the landlord's currently living arrangement is unsuitable for her condition. The occupational therapist has assessed the subject rental unit, and provided a list of modifications that would be required in order to make it suitable for her occupation.

The landlord's son obtained and provided into evidence an estimate from a contractor for the renovation work required to make the rental unit suitable for occupancy by the mother. This includes a new concrete sidewalk and concrete pad at the rear of the house to hold a wheelchair lift, demolition of the interior, re-plumbing, replacement of the furnace and hot water tank, electrical work, re-framing work, construction of a wheel chair accessible bathroom, new drywall and flooring throughout and a full kitchen renovation. The landlord's son testified the contractor was retained to prepare the necessary application for a building permit, and tendered a copy of the building permit and plumbing permit into evidence. The landlord has paid the contractor for that work, and has also paid the permit fees.

The female landlord testified that she wants to continue to live independently, and cannot do so at her current residence. Once the renovations are complete she intends to move into the home. She believes that the premises will suit her needs, and that she will have a support team to assist in her care.

The tenant makes numerous arguments to support his contention that the Notice should be cancelled. He testified that the former male landlord (who is now deceased) promised verbally that the tenant could live in the premises for as long as he wanted and that the rent would never be increased, but now the landlord's son wants market rent, which has been denied in a former hearing. The tenant has paid lower than market rent, but has also done maintenance to the house throughout the tenancy. The tenant submitted that the rental unit was not suitable for the landlord's mother, as front doors and hallways are too narrow for her wheelchair, and as the main living space is on the upper level. The tenant raises concern that the building permit does not disclose every portion of the work outlined in the contractor's list of improvements. The tenant notes peculiarities in terms of the address of the premises, and alleges that the landlord simply wants to renovate so he can get higher rent from someone else. He also submits the landlord broke into and damaged the premises.

The landlord's son denies he is trying to evict the tenant just to obtain more rent from someone else. In terms of the nature of the permits, he explained that he simply paid and relied upon the contractor to obtain the proper permits, and believes he has done so in good faith. He acknowledges breaking into the premises, but only because the tenant refused to allow entry for a properly scheduled inspection for the occupational therapist to do her assessment. He contends that following an exchange of letters, the tenant was given a proper notice for entry, and the tenant was intentionally absent from the premises, in an attempt to thwart such an assessment. The landlord's son cleaned up the broken glass before he left.

The female landlord confirmed that although the tenant made repairs, she always paid for the tenant's receipts for materials when given to her.

Analysis

I address firstly the tenant's contention that the landlord told him that he can live in the premises for as long as he wants to, (and would never be given a rent increase). This alleged statement was never confirmed in writing, and I have no way to verify if it was actually said, or to consider the context or conditions of the statement. Even if this statement was made however, it is not an enforceable term of the tenancy agreement.

There are specific terms that are imported into every tenancy agreement, as set out in the Schedule to the Residential Tenancy Regulation. The very first of these (paragraph 1 of the Schedule) provides that terms of a tenancy agreement may not change any right or obligation under the Residential Tenancy Act. A landlord has a clear right under the Residential Tenancy Act to end a tenancy in some circumstances, such as if the rent has not been paid, for cause, or for landlord use of the premises. As the verbal statement in question would supersede such statutory rights or obligations, it cannot be upheld. Notwithstanding a long standing tenancy in this home, and the alleged verbal statement, the landlord at all times has retained the general right to end this tenancy for landlord use of the property.

My review of the two month Notice itself confirms is in the correct form, and is properly prepared. I find that the necessary permits for renovation were obtained prior to the notice being given to the tenant. On its face, the notice is effective to end the tenancy.

I understand the main objection of the tenant to be that the Notice is not given in good faith. Policy Guideline #2 specifically addresses the issue of "good faith" and notes that "good faith" is an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage. A claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End the Tenancy.

In this case, I find that the landlord has demonstrated a good faith intention. This is evidenced by:

1. The evidence from the occupational therapist and physician that the female landlord's current housing is not suitable, and the assessment by the occupational therapist of the specific improvements needed at the subject premises to accommodate her needs;
2. The contractor's estimates of the costs for the necessary work to renovate the premises specifically to accommodate the female landlord's needs;
3. The payment by the landlord to the contractor to prepare and submit the application for the necessary building and plumbing permits;
4. The payment by the landlord of the permit fee costs;
5. The testimony of the female landlord of her intention to move into the premises once renovated.

While I accept that the landlord previously wanted to raise the tenant's rent, this does not establish that the landlord has a dishonest purpose or motive for ending this tenancy. I find it incomprehensible that the female landlord and her son, with the assistance of an occupational therapist, a physician and a contractor, would collude in a scheme to evict this tenant so they

could renovate and attract a new tenant. Rather, I accept the female landlord's testimony that she truly intends to occupy the premises, and although the landlord's son has demonstrated some frustration through this process, I find that neither he nor his mother is acting dishonestly or with an ulterior motive for ending the tenancy.

Based upon all the above, I find that the two month Notice to End Tenancy is effective to end the tenancy April 30, 2016. The tenant's application for an Order to cancel the notice is dismissed, as is the tenant's application to recover his filing fee.

Section 55 (1) of the Residential Tenancy Act provides that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if the landlord's notice is proper as to form and content, and the tenant's application to cancel the Notice is dismissed. Those conditions are met, and accordingly, an Order of Possession is granted to the landlord, effective April 30, 2016.

Conclusion

The tenant's claim is dismissed, and the tenancy shall end April 30, 2016 pursuant to the two Month Notice. The appropriate Order of Possession is issued to the landlord.

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 24, 2016

Residential Tenancy Branch