



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, PSF, RP, RR, MNR, MNDC, MNSD, OPL, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenant applied on February 26, 2016 for:

1. An Order cancelling a notice to end tenancy - Section 46;
2. An Order for the Landlord to comply - Section 62;
3. An Order for the Landlord to provided services or facilities - Section 65;
4. An Order for repairs - Section 67;
5. An Order for a rent reduction - Section 67;
6. A Monetary Order for compensation - Section 67;
7. An Order for the return of the security deposit - Section 38; and
8. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on March 23, 2016 for:

1. An Order of Possession - Section 55;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenants and Landlords were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matter

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure provides that claims made in an application must be related to each other. The primary matter is whether the tenancy continues or ends. As the Parties' claims in relation to the notice to end tenancy and the order of possession, along with the filing fees, are the only claims related to this issue, I dismiss the remaining claims of the Parties with leave to reapply.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Are the Parties entitled to recovery of their respective filing fees?

Background and Evidence

The tenancy started on April 1, 2015. Rent of \$1,300.00 is payable on the first day of each month. On February 21, 2015 the Landlord served the Tenants with a one month notice to end tenancy for landlord's use. The reason indicated on the Notice is that the Landlord or a close family member of the Landlord will be occupying the unit.

The Landlord states that his mentally disabled son will be moving into the unit for no rent as the son is currently in a unit that the son cannot afford given the size of the son's disability pension. The Landlord states that the son has been in this unit for the past 4 years. The Landlord states further that approximately 4 or 5 months ago the son informed them that his current residence will be redeveloped and that the son expects an eviction notice for this reason. The Landlord states that the rental unit is a duplex and they expect to be able to provide the other duplex to their other son who is physically disabled. The Landlord states that his son has already given notice to end his current tenancy for April 30, 2016 and that if the Landlord is not successful with its Notice then they do not know where their son will live. The Landlord states that their son does not want to live in the Landlord's own home as the son wants his independence. The Landlord states that the son is currently employed.

The Tenant states that they believe the Landlord wants to end their tenancy so that, among other things, the Landlord can obtain a higher rent now that the unit has been improved, largely by the Tenants. The Tenant states that last summer the Landlord was having problems with the tenant in the other duplex and talked about moving his son into that duplex in order to get that tenant out. The Tenant states that the Landlord owns several rental properties. The Tenant states that the Landlord has previously tried unsuccessfully to end the tenancy by issuing a one month notice to end tenancy for cause and a 10 day notice for unpaid rent or utilities. The Tenant states that in the Decision dated February 11, 2016 both notices were found to be invalid. It is noted that this Decision indicates the first notice was issued on December 31, 2015 and the next notice was issued January 28, 2016. The Tenant states that the Landlord was told at move-in that the Tenants, all pensioners, wanted a long term tenancy as a move was too expensive and stressful.

The Landlord states that he does not own any property other than the duplexes and his residence. The Landlord states that he wanted to move his son into either side of the duplex at any time as this was the original intention for purchasing the units in 1986. The Landlord states that the duplexes are “pretty much paid for”. The Landlord seeks an order of possession as early as possible since their son will not have housing as of April 30, 2016.

Analysis

Section 47 of the Act provides that a landlord may end a tenancy where the landlord or a close family member of the landlord, intends, in good faith, to occupy the rental unit. I accept the Landlord’s persuasive evidence of always intending to use the duplex units to ultimately provide independent housing for his disabled children. However, the Landlord’s evidence that the one son cannot afford his current unit on the disability allowance conflicts with the evidence that his son is also employed. Also, it does not make sense that the son would end a tenancy in advance of a proposed eviction for which the son would receive compensation. It certainly appears from the previous Decision that the Landlord is attempting to end the tenancy through any means

possible. Most glaringly, there is no evidence from the son himself and I note that there is no evidence that the son's mental disability prevents such evidence from being provided. As a result and while I do not question the Landlord's ultimate goal to house the sons, I find that the timing to have a son move in now is too convenient. I find therefore that the Landlord has failed to provide sufficient evidence to support the good faith intention of the son to move into the rental unit. The Tenants are therefore entitled to a cancellation of the Notice and the tenancy continues. As the Tenants have been successful I find that the Tenants are entitled to recovery of the **\$100.00** filing fee. The Tenants may deduct this amount from future rent in full satisfaction of the claim. As the Notice is cancelled I dismiss the Landlord's claim for an order of possession and recovery of the filing fee.

Conclusion

The Notice is cancelled and of no effect.

I grant the Tenant an order under Section 67 of the Act for **\$100.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: April 22, 2016

Residential Tenancy Branch