



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, MNDC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") issued April 26, 2016, for a monetary order for money owed or compensation under the Act and to have the landlord comply with the Act.

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 at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice to End Tenancy.

I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenant's request to set aside the Notice to End Tenancy. The balance of the tenant's application is dismissed, with leave to reapply.

In a case where a tenant has applied to cancel a notice Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence and submission first, as the landlord has the burden of proving that the notice was issued for the reasons given on the Notice.

Issue to be Decided

Should the Notice be cancelled?

Background and Evidence

The parties agreed that the tenant was served with the Notice, with an effective vacancy date of June 30, 2016. The reason stated in the Notice was,

- The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or landlord's spouse.

The parties agreed that the ownership of the property transferred in March 2016.

The landlord testified that property consists of two rental suites. The landlord testified the co-owner their father, wants to use the basement suite that the tenant is currently occupying for their own use. The landlord testified that the upper unit was not considered as the space is too large for their needs.

The tenant testified that they believe the only reason the Notice was given to them was to increase rent. The tenant stated that they received the Notice on the same dated that they had given the landlord a letter regarding the "Grandfather Plan" of Shaw Cable.

The landlord argued that rent is not the issue and they did not accept the tenants offer to increase rent. The landlord stated that their father (co-owner) currently lives with them in the same household and has determine that they want to have a space of their own. The landlord stated that they did not end the tenancy when they purchased the property because their father had not made the decision to move into the subject property yet.

Conclusion

When a tenant has filed to cancel a notice to end tenancy for landlord's use and calls into question the "good faith" requirement, the onus lies on the landlord to prove the two part test as follows:

1. The landlord must truly intend to use the premises for the purposes stated on the notice to end tenancy; and
2. The landlord must not have an ulterior motive as the primary motive for seeking to have the tenant vacate the rental unit.

The landlord's purchased the property in March 2016. Although I accept there were issues with the services provided to the tenant, such a cablevision. As the services were disconnected when the previous landlord moved from the property. However,

there is no evidence that the tenant asked the new owner to provided similar services, which were denied. The letter written by the tenant that was given to the landlord was for a rent reduction based on the value of the services the landlord was previously paying. Not the actual cost to the tenant or loss to the tenant.

While, I find it coincidental that both the tenant's letter and the Notice were exchanged on the same date, I find that is insufficient for me to determine that there is an ulterior motive as the primary motive. The evidence of the landlord was that their father who is shares a residence wants to have their own space. I find that reasonable.

In light of the above, the tenant's application to cancel the 2 Month Notice to End Tenancy Issued on April 26, 2016, is dismissed. During the hearing the landlord indicated that they are agreeable to extend the effective vacancy date to July 31, 2016. Therefore, the landlord is granted an order of possession at 1:00pm on July 31. 2016. A copy of this order must be served upon the tenant.

Conclusion

The tenant's application to cancel the Notice is dismissed. The landlord is granted an order of possession.

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: June 07, 2016

Residential Tenancy Branch