



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF

Introduction

This was an application by a tenant to cancel a landlord use two month Notice to End the Tenancy dated May 1, 2016 with an effective date of July 1, 2016. Both parties attended the hearing.

Preliminary matter:

The landlord submitted his evidence late and not in compliance with the Rules. The landlord did not serve his evidence on the tenant. I had not yet received the landlord's evidence as of the hearing. For these reasons I have excluded the landlord's written evidence.

Issue(s) to be Decided

Is the landlord entitled to an Order for possession or will the tenancy continue?

Background and Evidence

Service of the Application was admitted by the landlord. The landlord proved that the Notice was served personally on the tenant on May 1, 2016.

The landlord's agent PC, testified that the landlord intended to do extensive renovations of a duration of about forty days, which required the unit to be vacant. PC testified that actually the main purpose for the vacant possession and renovation was to permit the landlord's daughter to move in. PC admitted that the landlord selected "renovation" as a

ground for the Notice to End in error and has since issued another Notice checking off this ground and one stating that the landlord's daughter intends to reside in the unit.

The tenant testified when this landlord purchased the unit he requested a large rent increase. The tenant submitted that the unit is new and was renovated in 2012 and that the real reason for the renovation is to obtain more rent. The tenant testified that he wished to remain in the unit and if necessary would move out during the renovation and back in after it is completed.

Analysis

I am asked to decide whether the Notice should be aside and the tenancy continue, or whether the Notice is upheld and the tenancy end on the effective date of the Notice. The Notice is given under section 49(6) of the Residential Tenancy Act, which states:

- (6) A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:
 - (a) demolish the rental unit;
 - (b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant;

It is the landlord who has the burden of proof on the balance of probabilities to satisfy that he intends to perform the requirements specified in section 49 (6) of the Act in good faith. This onus must be satisfied strictly where the landlord seeks to end a tenancy.

Section 52 of the Act states:

52 In order to be effective, a notice to end a tenancy must be in writing and must:

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [tenant's notice], **state the grounds for ending the tenancy**, and
- (e) when given by a landlord, be in the approved form.

My emphasis added.

Section 49 (3) of the Act states as follows:

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

I find that the landlord has relied section 46 of the Act when issuing the Notice to End but admitted at the hearing that the real grounds for the Notice was section 49(3).

These are two completely inconsistent grounds for issuing the Notice to End the Tenancy. Accordingly I find that the Notice dated May 1, 2016 does not comply with section 52 (d) as it fails to state the real ground for ending the tenancy and is therefore invalid and unenforceable. Accordingly I have allowed the tenant's application and have cancelled the Notice to End the Tenancy. The tenant is entitled to recover his filing fee of \$ 100.00. I permit the tenant to deduct this amount from his next rental payment.

Conclusion

I have cancelled the Notice to End the Tenancy dated May 1, 2016 with an effective date of July 1, 2016. I Order the tenancy to continue. The tenant is entitled to recover his filing fee of \$ 100.00. I permit the tenant to deduct this amount from his next rental payment.

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 06, 2016

Residential Tenancy Branch