



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC, FF

Introduction

The tenant applies to cancel a two month Notice to End Tenancy dated and received April 30, 2016.

The Notice states that the landlord or a close family member of the landlord will occupy the premises. The landlord says that his son will be occupying the rental unit.

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Is the Notice a valid Notice? Does the landlord's son have a good faith intention to occupy the rental unit?

Background and Evidence

The rental unit is a one bedroom suite located above the garage attached to the landlord's house.

The tenancy started in September 2013. The monthly rent is \$900.00. The landlord holds a \$500.00 security deposit.

The landlord testifies that his eighteen year old son, who has been living with his mother, and who is presently graduating from high school, will be moving into the rental unit.

The tenant says that on April 28, two days before he received the Notice, the landlord asked him for a \$200.00 rent increase. The tenant refused, pointing out the rent increase restrictions imposed by the *Residential Tenancy Act* (the "RTA") and its

Regulation (presently a 2.5% increase is permitted). He says the landlord's response was to serve him with the Notice and so the landlord is not acting in good faith.

To this charge the landlord testifies that on April 28 he did not ask the tenant for a rent increase though they spoke about the rent.

The tenant adduced an audio tape of a conversation with the landlord on May 1, surreptitiously recorded by the tenant, in which the tenant repeatedly referred to the landlord's request for a rent increase.

In response the landlord testifies that it is not improper to raise rent above the percentage imposed by the Regulation if both the landlord and tenant agree.

Analysis

The ending of a tenancy is a very serious matter. While the requirement of proof on a balance of probabilities is the evidentiary standard to be met, clear and cogent evidence will be required to show good cause to end a tenancy.

Residential Tenancy Policy Guideline 2, "Good Faith Requirement when Ending a Tenancy" states:

If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy.

The tenant's evidence raises a significant concern that the landlord has an ulterior purpose for ending the tenancy; namely, re-renting after a short period, at a higher rent.

In my view the landlord testimony changed from his initial statement that he did not ask the tenants for a rent increase on April 28 to his later testimony that he and the tenant had a rent conversation about an increase on that day.

The tenant's recorded conversation with the landlord on May 1, in which the tenant repeatedly refers to the rent increase request, was the obvious time for the landlord to deny that he had asked for a rent increase, yet he did not deny it.

Of significance as well is the fact that throughout that conversation, the landlord made no mention of his son moving into the rental unit. There was no obligation on the

landlord to explain the two month Notice at that time, but a reasonable person in that situation would have attempted to explain why the rental unit was needed: that a family member was moving in.

However, there is a second aspect of the evidence which I consider determinative and that is the evidence or quality of the evidence of the tenant's son's intention.

Section 49(3) of the *RTA* states:

(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.

The landlord's son is clearly a "close family member."

The landlord says that his son is from a previous marriage. The landlord's second family occupies the home adjacent to the rental unit. He says the son is not particularly attached to the second family and that is why he needs his own place.

I conclude that it will be the landlord's son who will be occupying the rental unit. The landlord and his second family will not be occupying it.

Section 49(3) requires that in order to issue a two month Notice "... a close family member of the landlord intends in good faith to occupy the rental unit."

Given the serious consequences of the ending of a tenancy, it would be unsafe to make a finding regarding the landlord's son's intention based on the second hand evidence of the landlord.

Secondly, it is not possible to gauge or test the landlord's son's good faith without having him give direct evidence and be exposed to questioning.

In result I find that the landlord has not established that his son intends in good faith to occupy the rental unit.

The two month Notice must be cancelled.

Conclusion

The application is allowed. The two month Notice to End Tenancy dated April 30, 2016 is cancelled.

The tenant is entitled to recover the \$100.00 filing fee paid for this application. I authorize him to reduce his next rent due by \$100.00 in full satisfaction of the fee.

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 17, 2016

Residential Tenancy Branch