



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL,

Introduction

The Application for Dispute Resolution filed by the Tenants seeks an order to cancel the two month Notice to End Tenancy dated May 18, 2016 and setting the end of tenancy for July 31, 2016. Neither party provided a copy of the Notice to End Tenancy.

However, the parties are in agreement that the grounds on the 2 month Notice to End Tenancy was that the landlord or a close family member intends to occupy the rental unit.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the 2 month Notice to End Tenancy was sufficiently served on the Tenants on May 24, 2016. Further I find that the Application for Dispute Resolution/Notice of Hearing served on the landlord by mailing, by registered mail to where the landlord resides on May 27, 2016. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issue to be decided is whether the tenant is entitled to an order cancelling the 10 day Notice to End Tenancy dated May 18, 2016?

Background and Evidence

The tenancy began on October 1, 2013. The present rent is \$1235 plus \$200 for utilities per month payable in advance on the first day of each month. The tenant(s) paid a security deposit of \$675 at the start of the tenancy.

The rental property is composed on a basement level which is rented by another tenant, the main level which is rented by the tenants and the upper level which is occupied by the landlord.

The landlord gave the following testimony:

- He needs to regain possession so that it can be used by his father in law and mother in law when they visit Canada.
- His in laws presently reside in Japan. Since 2011 his in laws have visited approximately 2x per year and have stayed between 8 days to 23 days for each visit.
- It is his intention that his in laws will stay in Canada for a longer period up to 6 months as they are getting older.
- The rental unit occupied by the applicants is suitable for living by the in laws as it has a front ground level entrance, walk-out back deck for smoking and exposing to fresh air, warm and dry floor at ground level, an inside stairway that can provide a privacy and accessible way to below unit. ,

The tenants dispute the testimony of the landlords. They testified as follows:

- The goal of the landlord is to renovate and re-rent the rental unit at a higher rate.
- The landlord served a similar 2 month Notice to End Tenancy on the tenant who lives in the basement level suite. That hearing was set for yesterday.
- They have lived in the rental property since 2014. They have an elderly dog who is blind and would find relocating very difficult.

In response the landlord testified that the tenant in the other case did not show and he obtained an Order for Possession of that unit. He intends to move into that unit and allow his in laws to live in the rental unit on the main floor. He would then rent the upper floor.

The Notice to End Tenancy relies on section 49(3) of the Act which provides as follows:

49(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.

Policy Guideline 2 provides as follows

2. Good Faith Requirement when Ending a Tenancy

This policy guideline addresses demonstration of good faith when a landlord ends a tenancy for landlord's use of property.

LEGISLATIVE FRAMEWORK

The *Residential Tenancy Act*¹ and the *Manufactured Home Park Tenancy Act*² allow a landlord to end a tenancy if the landlord intends in good faith to:

- provide the rental unit to a new caretaker, manager or supervisor, when the employment of the tenant has ended;
- move in themselves, or allow a close family member to move into the unit;
- sell the unit and after all the conditions of sale are removed, the purchaser requests the seller issue the Notice to End Tenancy because they or a close family member intend to move in; or
- substantially renovate or demolish the rental unit, with all required permits and approvals, or convert it to another use, including a caretaker's unit, or convert it to a strata unit.

GOOD FAITH REQUIREMENT

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. This might be documented through:

- a Notice to End Tenancy at another rental unit;
- an agreement for sale and the purchaser's written request for the seller to issue a Notice to End Tenancy; or
- a local government document allowing a change to the rental unit (e.g., building permit) and a contract for the work.

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.

If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive for ending the tenancy.

Analysis:

After carefully considering the disputed evidence I determined the landlord has failed to establish a good faith intention to move into the rental unit for the following reasons:

- The landlord served a 2 month Notice to End Tenancy on two rental units in the rental property at the same time. The landlord failed to provide a sufficient explanation as to why he needs two rental units to house his in laws when they visit.
- The landlord testified the other tenant failed to show for the hearing and her application was dismissed. Against the landlord failed to provide a satisfactory explanation as to why he needs this unit when the basement unit is available for their use.
- The landlord failed to present any evidence from his in laws that support his testimony they now wished to stay up to 6 months in Canada per year.
- The landlord testified he intends to move into the basement suite and allow his in laws to visit in the suite above. If this is the case it would appear that he intends to rent the rental unit he is presently living in. I determined the landlord has an ulterior motive which negates the good faith intention.
- If the landlord had a good faith intention to move to the basement suite one would have expected that he would have offered one of the two sets of tenants the right to rent his suite. There is no evidence that this occurred.

Determination and Orders:

After carefully considering all of the evidence I determined that the landlord failed to establish a good faith intention to end the tenancy. As a result I ordered that the Notice to End Tenancy dated be cancelled. The tenancy shall continue with the rights and

obligations of the parties remaining unchanged. The Application for Dispute Resolution has not made a request to recover the cost of the filing fee so no such order is made.

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 23, 2016

Residential Tenancy Branch