



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LNL Investments Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

CNL

Introduction

The hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Two Month Notice to End Tenancy for Landlord's Use of Property.

The Tenant stated that the Application for Dispute Resolution, the Notice of Hearing, and documents submitted to the Residential Tenancy Branch with the Application for Dispute Resolution were personally served to the Agent for the Landlord, although he cannot recall the date of service. The Agent for the Landlord acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

On June 22, 2016 the Landlord submitted nine pages of evidence to the Residential Tenancy Branch. The Property Owner stated that some of these documents were served to the Tenant prior to the Tenant filing this Application for Dispute Resolution however none were served as evidence for these proceedings. As none of the documents were served as evidence for these proceedings, they were not accepted as evidence.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

Issue(s) to be Decided

Should the Two Month Notice to End Tenancy for Landlord's Use of Property, served pursuant to section 49 of the *Residential Tenancy Act (Act)*, be set aside?

Background and Evidence

The Landlord and the Tenant agree that:

- this tenancy began prior to the Property Owner purchasing the property in 2014;
- rent of \$800.00 is due by the first day of each month;
- the Tenant rents a single family dwelling on the property;

- the tenancy includes the right to use land adjacent to the property;
- neither party is certain of the amount of property the Tenant is entitled to use, but agree it is between ½ and 1 acre;
- there is an old motel on a different section of the property owned by the Landlord which has been converted to suites;
- on May 26, 2016 the Tenant was personally served with a Two Month Notice to End Tenancy for Landlord's Use of Property, dated May 19, 2016;
- the Notice to End Tenancy declares that the Tenant must vacate the rental unit by July 31, 2016; and
- the Notice to End Tenancy declares that the tenancy is ending because a landlord that is a family corporation may end a tenancy in respect of a rental unit if a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.

The Landlord contends that:

- the Landlord is a family corporation and the Property Owner is one of the owners of the property;
- the Landlord wishes to end this tenancy, in part, so it can clean up the property behind the rental unit that is not part of the tenancy;
- the Landlord wishes to clean up the property as it intends to develop the site, although the Landlord does not currently know how it will be developed;
- the development plan may include building several "tiny" homes on the site, depending on zoning bylaws;
- the company will use the rental unit to store tools and equipment, to be used while the property is being cleaned;
- the Landlord does not know whether the rental unit will eventually be renovated or demolished.
- there are currently 4 vacant suites in the converted motel;
- family members of the Landlord periodically use 2 of the vacant suites in the converted motel;
- the Landlord intends to re-rent the other 2 vacant suites in the converted motel;
- the Landlord does not intend to re-rent the Tenant's rental unit in its "current state"; and
- the Landlord did not attempt to increase the rent by 62% in March of 2016.

The Tenant contends that:

- the property behind the rental unit can be accessed and cleared without ending his tenancy;
- the Landlord's attempt to end his tenancy is premature, as no building permits for developing the unit have been issued;
- he was told the Landlord wanted to use the rental unit for storage;
- to end this tenancy a close family member must intend to move into the rental unit;

- the Landlord has two other residences on the property in which family members reside, which indicates that the Landlord is not acting in good faith in ending this tenancy; and
- in March of 2015 the Landlord attempted to increase the rent by 62%, which the indicates that the Landlord is not acting in good faith in ending this tenancy.

The Tenant submitted a site plan which the Tenant contends is proof that the property can be access and cleaned up without ending the tenancy.

The Tenant submitted a letter from the Property Owner, dated May 16, 2016, in which the Property Owner declares that the Landlord has no intentions of “renting the unit out in its current state” and that the Landlord requires the site as it “interferes with our access to the entire site as well as our ability to use the property for personal reasons”.

Analysis

Section 49 of the *Act* authorizes a landlord to end a tenancy for a variety of reasons. Section 49 of the *Act* does not authorize a landlord to end a tenancy for the purposes of providing a landlord with easy access to property behind a rental unit.

On the basis of the undisputed evidence I find that the Landlord wishes to end this tenancy, in part, because the Landlord wishes unfettered access to the property behind the rental unit for purposes of cleaning up that property. As section 49 of the *Act* does not authorize a landlord to end a tenancy for the purposes of providing a landlord with easy access to property behind a rental unit, I find that the Landlord does not have the right to end this tenancy for that purpose.

Section 49(4) of the *Act* authorizes a landlord that is a family corporation to end a tenancy if a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit. On the basis of the testimony of the Property Owner and in the absence of evidence to the contrary I find that the Landlord wishes to store equipment and property inside the rental until while the Landlord, which is a company, clears the property and determines how property will be developed. Essentially I find that the Landlord intends to convert the rental unit into a commercial building.

As the evidence shows that the rental unit will be used for a commercial purpose, rather than be occupied by an individual, I find that the Landlord does not have the right to end this tenancy pursuant to section 49(4) of the *Act*. Although in a written document, dated May 16, 2016, the Property Owner declared that the property will be used for “personal reasons” I find that the evidence does not support that declaration.

As the Landlord has submitted insufficient evidence to establish that this tenancy should end because a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit, I grant the

Tenant's application to set aside the Two Month Notice to End Tenancy for Landlord's Use of Property that is dated May 19, 2016.

In the event the Landlord determines that the rental unit will be demolished or renovated/repared in a manner that requires the rental unit to be vacant, the Landlord retains the right to serve the Tenant with another Two Month Notice to End Tenancy for Landlord's Use of Property, pursuant to section 49(6) of the *Act*, once the Landlord has all the necessary permits and approvals required by law to demolish the rental unit or to renovate/ repair the rental unit.

Conclusion

The Two Month Notice to End Tenancy for Landlord's Use of Property dated May 19, 2016 has been set aside. This tenancy shall continue until it is ended in accordance with the *Act*.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: July 13, 2016

Residential Tenancy Branch