



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 Tenant seeks an order to cancel the 2 month Notice to End Tenancy dated May 19, 2016 and setting the end of tenancy for July 31, 2016.

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 Notice to End Tenancy was personally served on the Tenant on May 26, 2016. Further I find that the Application for Dispute Resolution/Notice of Hearing was personally served on the landlord on June 13, 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 tenant is entitled to an order cancelling the 2 month Notice to End Tenancy dated May 19, 2016?

Background and Evidence

The tenancy began approximately 3 to 4 years ago. The tenancy agreement is oral and provides that the tenant(s) would pay rent of \$400 per month payable in advance on the first day of each month. The tenant(s) has not paid a security deposit.

The present landlord purchased the property approximately 2 years ago. The property is 8.5 acres in size and includes a hotel/motel on the ocean side that has been

converted into suites. The rental unit which is the subject of this hearing is the homestead cottage. It is about 800 to 900 square feet and is in the rear of the property and is in poor condition..

The representative of the tenant testified as follows:

- The rental property includes a hotel/motel which has been converted into suites. There are 5 suites. Two of the suites have been rented.
- Two have been reserved for family use year round. A fifth unit is being renovated.
- The landlord lives in Alberta and operates a business there.
- They doubt if anyone will move into the rental unit.
- The landlord is not acting in good faith as there are other units which the landlord can use when they are out on the property.
- No permits have been filed with the Municipality that would indicate they intend to renovate or develop this rental unit.
- The tenant submits that the landlord is not acting in good faith and any 2 month Notice is premature.
- The tenant testified the landlord has not inspected the rental unit. He stated they are welcome to inspect provided proper notice is given.

The representatives of the corporate landlord live in Alberta. They testified as follows:

- They want to take over the property and the rental unit for their personal use.
- The corporate landlord is a family corporation. They failed to produce corporate records that would confirm their share structure.
- The rental unit is in poor condition. They are not sure what they are going to do with it as they have not conducted an inspection
- The landlord needs to regain possession in order to evaluate their options.
- They may wish to move into the rental unit. This would provide them with the opportunity to rent the two suites that have been reserved for family use. One of those units is a 2 bedroom unit and could be rent for between \$800 and \$10000 a month.
- They may end up using this rental unit for storage purposes.
- They believe significant work needs to be done on the roof and electrical system.
- The tenant made an agreement with the previous landlord to maintain the property. The tenant has failed to live up to this agreement.

Grounds for Termination:

The landlord seeks to end the tenancy based on the following grounds:

49 (4) 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.

Family corporation is defined in section 49 as follows:

"family corporation" means a corporation in which all the voting shares are owned by

- (a) one individual, or
- (b) one individual plus one or more of that individual's brother, sister or close family members;

Policy Guideline #2 includes the following:

"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 all of the evidence presented at the hearing I determined the landlord has failed to establish a good faith intention to move into the rental unit for the following reasons:

- The family already has at their disposal two suites which are vacant year round which they can and do use which they are visiting the rental property.
- The landlord has not inspected the rental unit in question. I am not satisfied they have a good faith intention to use the rental property as they acknowledge they do not know the condition inside. The tenant testified the landlord is welcome in inspect the rental unit provided proper notice is given.

- The evidence of the landlord was inconsistent. At one stage one of the witnesses for the landlord stated they did not know what they were going to do with the rental unit as they had not seen its condition. At another stage of the hearing the other witnesses stated an intention for the family to move in and thereby allow them to rent the other units they have available to them. At another stage they stated they might use it for storage.
- The landlord may have development plans which would require the end of the tenancy. However the landlord did not disclose those plans in the hearing and there are no permits. I determined that if future development is the reason for the Notice to End Tenancy then this Notice to End Tenancy is premature.
- The landlord failed to produce evidence of the share structure of the corporate owner of the property and as a result is not able to prove the property will be occupied by an individual who owns, or whose close family members own all the voting shares.

In summary I determined the landlord failed to establish sufficient cause to end the tenancy.

Determination and Orders:

As a result I ordered that the Notice to End Tenancy dated May 19, 2016 be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged.

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: July 13, 2016

Residential Tenancy Branch