



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF

Introduction

The tenants apply to cancel a two month Notice to End Tenancy for landlord use of property dated July 30, 2016.

The Notice claims that the landlord or a close family member intends to occupy the rental unit. That ground is a permitted ground for a landlord to end a tenancy under s. 49 of the *Residential Tenancy Act* (the “Act”).

The landlord and the tenant Ms. P. 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

Does the relevant evidence presented during the hearing show on a balance of probabilities that the landlord has valid grounds for ending the tenancy under s. 49?

Background and Evidence

The rental unit is a two bedroom basement suite in the landlord's home. There is also another rental unit contained in the home, rented to others.

This tenancy started in or about 2005 with previous owners. There is a written tenancy agreement from then though it was not produced by either party. The current rent is approximately \$687.00 per month (neither side could be exact), due on the first of each month. The landlord holds a \$325.00 security deposit.

On July 29, 2016 in the evening, the landlord came to the tenant's door with his cousin S. and informed the tenants that S. needed a place to stay and so would be moving into the tenants' basement suite. The next day, S. served the tenants with the two month Notice in question.

The landlord attended this hearing and testified that S. would no longer be moving into the suite. Rather, his son is getting married and will move into the suite with his wife.

The landlord filed no material for this hearing. The proposition that the landlord's son would be moving was only made know to the tenants at this hearing.

Analysis

During the hearing the parties addressed a number of other issues between them involving the feeding of wildlife, TV noise, payment for air conditioning, the non-attendance of the landlord at a previous dispute resolution hearing, lack of heat and the parking of the landlord's car.

None of these issues has been raised by the tenant's application; it seeks only a cancellation of the Notice. I determine that these issues are irrelevant to the present matter. The parties are free to pursue their complaints under another application.

The ending of a tenancy is a very serious matter. A significant proportion of citizens rent accommodation their entire adult lives. The rental unit is their home. A landlord desiring to evict a tenant will be required to provide convincing, cogent evidence of a lawful purpose.

In this case I find that the reason made know to the tenants for the Notice; the occupation of the premises by the landlord's cousin, not to be a valid reason. Section 49 of the *Act* permits eviction to allow a "close family member" to take occupancy. A cousin does not fit within the definition of close family member.

In addition, the reason for the Notice; that the landlord's cousin would be moving in, no longer exists. For that reason, the Notice cannot stand.

In any event, I would cancel the Notice because the landlord has failed to formally notify the tenants prior to this hearing that it was his son who now intends to occupy the rental unit. Without prior knowledge of this detail, the tenants have been caught by surprise at this hearing and have not had an opportunity to investigate that claim or present evidence to dispute it.

Conclusion

The two month Notice to End Tenancy dated July 30, 2016 is hereby cancelled.

The tenants are entitled to recover the \$100.00 filing fee paid for this application. I authorize them to reduce their next rent due by \$100.00, in full satisfaction of the fee.

This decision was rendered orally at hearing and 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: September 22, 2016

Residential Tenancy Branch