



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

The tenant applies to cancel a two month Notice to End Tenancy dated and served July 31, 2016.

The Notice claims that the landlord has all necessary permits and approvals required by law to convert the rental unit to a non-residential property. That ground is a lawful ground to end a tenancy under s. 49 of the *Residential Tenancy Act* (the “Act”).

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

Does the relevant evidence presented at hearing show on a balance of probabilities that the landlord intends to use the premises as claimed and has all the necessary permits and approvals?

Background and Evidence

The rental unit is a one bedroom suite in the lower portion of a home. The upper portion had been rented to others but has been reclaimed by the landlord.

This tenancy, the parties say, started in 2004. The monthly rent is \$400.00, due on the first of each month. The landlord does not hold any deposit money.

This is not the first two month Notice the tenant has received. Earlier in the year the landlord issued a two month Notice claiming that a close family member would be occupying the suite. The tenant challenged that Notice (file number noted on cover page of this decision) and was successful. It was determined that the landlord intended to convert the suite to a business purpose and so had given the Notice claiming the wrong reason.

The landlord, perhaps thinking the first Notice failed due to a spelling mistake, issued a second one for the same reason. The tenant challenged it (file number on cover page) and was successful, the arbitrator deciding that the issue had been conclusively determined at the earlier hearing.

In the present case, the landlord has issued the Notice based on a ground more consonant with his claimed intention. His son and partner intend to move into the upper portion of the home and convert (by building a stairway between upper and lower and removing the kitchen) the lower suite for their business.

A nalysis

It is apparent from the landlord's evidence that to carry out the conversion it is necessary to obtain a permit and approval from the local government. The landlord had been in discussion with the local government for a couple of weeks before giving the Notice and no doubt had every confidence that he would receive the necessary approval. He applied for his permit on August 2, 2016 and duly received it.

Section 49(6) of the *Act* provides

(6) A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:

- (a) demolish the rental unit;
- (b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant;
- (c) convert the residential property to strata lots under the [Strata Property Act](#);
- (d) convert the residential property into a not for profit housing cooperative under the [Cooperative Association Act](#);
- (e) convert the rental unit for use by a caretaker, manager or superintendent of the residential property;
- (f) convert the rental unit to a non-residential use.

As can be seen, the landlord must have the necessary permits and approvals in order to end the tenancy. That means that he must have them at the time he issues the Notice ending the tenancy.

In this case, he clearly did not.

For that reason the Notice was premature and must be cancelled.

I make no finding about the landlord's good faith intention to carry out the stated purpose in the Notice.

Conclusion

The tenant's application is allowed. The two month Notice to End Tenancy dated July 31, 2016 is cancelled. There is no claim for recovery of any filing fee.

This decision was given 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 30, 2016

Residential Tenancy Branch