



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 August 17, 2016. The Notice claims that the rental unit will be occupied by the landlord or a close family member. Proof of a good faith intention to so occupy the rental unit is a lawful cause for ending a tenancy under s. 49 of the *Residential Tenancy Act* (the “Act”).

All 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. Ms. H.K., the landlords’ daughter acted as advocate and as translator back and forth between the English and Punjabi languages. 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 landlords have a good faith intention of having the rental unit occupied by a close family member?

Background and Evidence

The rental unit is a one bedroom suite in the lower level of the landlords’ three level home. There is a second rental unit on the lower level, a two bedroom suite, rented to relatives of the landlord.

This tenancy started in June 2007. There is no written tenancy agreement. The current monthly rent is \$550.00. The landlord holds a \$250.00 security deposit.

Ms. H.J. testifies that the tenant's suite will be used by her grandmother, the mother of Mr. B.J.

She says that her grandmother is now 82 years old and in very poor health, suffering from Parkinson's disease and dementia.

Her grandmother has been living with the family on the upper two levels of the home since the landlords purchased eight years ago. Because of her health, the elderly woman is restricted to the main floor of the home. She occupies the sole bedroom on that level and the single bathroom on that level has been converted to her use as a disabled person. That level also houses the kitchen, living room and dining room for the family.

Ms. H.J. says that health nurses attend on her grandmother four times a day to take care of her feeding, bathing and other personal tasks. Her father Mr. B.J. works nights and the comings and goings of the nurses during the day make it difficult for him to sleep.

She says that her grandmother has now become incontinent and she is prone to involuntary urination on the furniture and carpet on the main floor causing her and the family much distress.

Ms. H.J. says that it's the family's view that moving her grandmother into the tenant's rental unit will alleviate much of the disruption and distress presently being suffered. There is an internal stairway and door from the landlords' portion of the home, down into the tenant's suite. The landlords intend to convert the bathroom in the tenant's rental unit into one compatible with the grandmother's condition. Health nurses can come and go without disturbing the family upstairs and the family will have access to the suite through the inner stair and door.

The tenant says he had a conversation with Mr. B.J. wherein Mr. B.J. told him he wanted more rent and that he would evict him if he did not agree. Mr. B.J., through his daughter, denies it.

The tenant produced photos showing the suite and the numerous steps between it and the front street.

He is skeptical that though the landlords say the grandmother's health has been deteriorating over three months, they did not take the opportunity to move her into the next door, two bedroom basement suite when it became vacant in June of this year.

As well, he questions why his suite should be used for the elderly woman when the main floor bathroom has already be altered to accommodate her.

Analysis

This is an unfortunate situation. The tenant himself is not in good health and this accommodation appears to be a very good value. Locating a similar place would not be easy.

Nevertheless, the *Residential Tenancy Act* does not permit me to consider a tenant's circumstances in determining whether or not a Notice to End Tenancy is a valid Notice or not.

The evidence presented satisfies me that the landlords have a good faith intention to relocate Mr. B.J.'s mother into the rental unit. Given the repeated interruption to the home caused by the health nurses and given the undisputed state of the elderly woman's health, it is reasonable to make such a move.

The fact that there are steps and a stairway from the front street to the door of the rental unit is not particularly pertinent. There is no suggestion that the grandmother would go back and forth from the rental unit to the front street on a regular basis.

Regarding the allegation that the landlord simply wants the tenant out in order to re-rent at a higher rent, that allegation is disputed and I find that it has not been proved. The landlords are aware that they lose the last month's rent by giving a two month Notice. They are aware that if they fail to use the tenant's rental unit for the stated purpose for at least six months the tenant may make a claim against them; including a claim for a penalty equivalent to two months' rent.

Conclusion

The tenant's application to cancel the Notice is dismissed. Pursuant to s. 55 of the *Act*, the landlords will have an order of possession effective October 31, 2016.

This decision was rendered orally after 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: October 19, 2016

Residential Tenancy Branch