# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes CNL, RP, FF

Introduction

The tenant applies to cancel a two month Notice to End Tenancy for landlord use of property dated and received September 30, 2016, with an effective date of November 30, 2016. He also seeks a repair order requiring the landlord to complete the installation of a window.

The Notice claims that the landlord has all the necessary permits and approvals require by law to demolish the rental unit or renovate or repair it in a manner that requires the rental unit to be vacant. It also claims that the landlord intends to convert the rental unit for use by a caretaker, manager or superintendent of the residential property.

Either of these grounds, if proved, are lawful grounds for ending 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 during the hearing show on a balance of probabilities that the landlord intends to renovate or repair the rental unit to an extent reasonably requiring vacant possession of the rental unit? Does it show that the landlord has a good faith intention of converting the unit to a caretaker suite? Has the tenant shown entitlement to a repair order?

Background and Evidence

The rental unit is a bachelor suite carved out of what was once a “game room” on the main floor a conventional house. There are two other suites on the same floor but only one is rented out. The other is occupied by the landlord’s son. There is a rental unit located on the floor above and there are two rental units located on the floor below that of the tenant’s rental unit.

Additionally, there is a one bedroom ‘’caretaker cottage” called “the roost” on the same parcel of property.

The tenancy started in May 2015. There is a written tenancy agreement but neither side submitted a copy of it. The monthly rent is $625.00, due on the first of each month, in advance. The landlord holds a $325.00 security deposit.

The landlord Ms. D.H. testifies that in addition to this residential property, she and her husband own and rent out rental units on three other parcels of land in the same neighbourhood. One contains two rental units plus shared accommodation for four tenants. Another, a house, contains a single rental unit and a third contains a single rental unit.

She says that it is her intention to incorporate the tenant’s rental unit back into the main floor of the house and provide the entire main floor as accommodation for a caretaker for all of the landlord’s rental property in the neighbourhood.

She produces a letter from a Mr. W.P. who expresses some interest in being the landlord’s “caretaker/property manager” and in moving himself, his partner and four children into the main floor. His letter indicates that he is considering the landlord’s proposal “for possibly sometime in the spring, March or April.

There was no indication that any permits or authorizations would be required to incorporate the tenant’s rental unit into the main floor area again. It appears that all is required is to reinstate an existing door between the areas, which has been nailed shut.

The landlord frankly admits that at least part of the reason for the Notice is to get rid of the tenant. Thus the landlord is not going out of her way to offer the tenant any other of her rental units that might become available.

Mr. D.H., the respondent landlord’s husband and co-owner, testifies that Mr. W.P. would not be a “caretaker” just someone helping out around the property with the responsibility

to watch over the water system for the property. He notes that the tenant's unit is the only one with a tub.

The tenant says that Mr. W.P. and his family could fit in one of the other rental units and leave his rental unit intact.

Analysis

Section 49(6)(e) of the *Act* permits a landlord to end a tenancy when the landlord intends to convert the rental unit for use by a caretaker, manager or superintendent of the residential property.

The purpose of the *Act* is to provide a benefit to tenants; among other things, to provide them with a form of security of tenure in their tenancy. Any ambiguity in the *Act* must be interpreted in the tenant's favour.

In my view the words used in s. 49(6)(e) require that the landlord actually have a caretaker, manager or superintendent before giving such a Notice. The *Act* does not use the words "prospective" caretaker, manager or superintendent, or "hoped for" caretaker, manager or superintendent.

In this case the landlord intends to end this tenancy and convert the tenant's rental unit merely on the hope that Mr. W.P. will, four or five months after the effective date of this Notice, accept the caretaker/property manager position. If the Notice was effective it would put the tenant in an impossible position trying to determine whether or not the landlord has, within a reasonable time, complied with s. 51(2), which provides:

> (2) In addition to the amount payable under subsection (1), if
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> > (a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or
> >
> > (b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,
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> the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

If Mr. W.P. decides not to take the position, the landlord indicates she will continue her search for someone to assume occupation of the entire main floor. I consider this no

more than speculation on her part. She may well find an acceptable person who requires much less space than the main floor.

Speculation is not a sufficient basis for upholding a Notice ending a tenancy.

In all the circumstances, the landlord's Notice to End Tenancy is premature.

Conclusion

The tenant's application to cancel the Notice is allowed. The two month Notice to End Tenancy dated September 30, 2016 is hereby cancelled.

The tenant presented no evidence to support a claim for repair or the completion of the installation of a window. That portion of his application is dismissed.

As the tenant has been successful in having the Notice cancelled, he is entitled to recover the $100.00 filing fee paid for the application. I authorize him to reduce his next rent due by $100.00 in full satisfaction of the fee.

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: December 02, 2016

Residential Tenancy Branch