



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 49; and
2. An Order for the Landlord’s compliance - Section 62.

The Landlords and Tenants were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Has the Landlord complied with the Act?

Background and Evidence

The tenancy started on April 1, 2014. Original rent of \$2,200.00 was reduced to \$2,000.00 in May 2015 and is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$1,100.00 as a security deposit. On January 31, 2017 the Landlord served the Tenant in person with a two month notice to end tenancy for landlord’s use (the “Notice”). The Notice indicates the landlord or a family member intends to move into the unit and sets the effective date as April 1, 2017.

The Witness, the Landlord’s son, states that he told his parents that he wished to move into a larger unit and that for this purpose they viewed the unit in October or November 2016. The Witness states that shortly after this viewing he became engaged and now lives with his fiancé in the one bedroom apartment elsewhere in the city. The Witness

states that he works at the family restaurant that is located close to the rental unit unlike his current residence. The Witness states that he has not lived in his mother's home for a few years. The Witness states that he has two dogs and that they sought and obtained approval from the Strata for having these pets when he moves into the unit. The Witness states that he has given notice to his current landlord to move out at the end of this month.

The Tenant states that the Landlord's son is living at home. The Tenant states that when the Landlord served the Notice the Landlord said that they wanted to raise the rent, wanted to renovate the unit and wanted to sell it this summer. The Tenant states that the Landlord also told the Tenant that they wanted their son to move out of the family home. The Tenant states that he had a friend call the son and the son at first said "what" and then "oh yeah, yeah". The Tenant states that the son's response sounded contrived. The Tenant states that the unit is only 7 years old and does not need renovations except maybe painting and hardwood flooring to replace the aging carpets.

The Landlord states that the Tenant's evidence is correct in that she does have a son living with her but it is not the same son that is moving into the unit. The Landlord states that the Tenant is correct that her son, the Witness, may also move out of the unit but that this was told to the Tenant in response to them telling the Landlord that the neighbours were noisy. The Landlord states that if the neighbours are too noisy the son may not want to live there long. The Landlord states that she does plan on making renovations as she plans to install hardwood where there is currently carpet. The Landlord states that if they only wanted higher rent they would not have reduced the rent for the Tenant.

Analysis

Section 49(3) provides that a landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. Although the Tenant gives evidence about a son living

with the parents and about a friend talking to the son, I accept the Landlord's evidence that there is another son and that the son who lives with the parents is not the son who plans to move into the unit. I also find that the indirect evidence of another person talking to a son is very weak. The person who spoke to the son was not called as a Witness nor did this person provide any statement in writing for this hearing.

I do not consider the Tenant's evidence to be very compelling or persuasive in the face of what I consider to be very forthright and credible evidence from the Landlord. I also consider the persuasive Witness evidence and the evidence of the Strata pre-approval of pets to find on a balance of probabilities that the Landlord has a good faith intention in ending the tenancy. There is no evidence to indicate that the Landlord acted out of compliance with the Act. For these reasons, I find that the Notice is valid and I dismiss the Tenant's application.

Section 55(1) provides that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, an order of possession must be granted to the landlord if, the notice to end tenancy complies in form and content and the tenant's application is dismissed or the landlord's notice is upheld. Section 52 of the Act provides that In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

Considering that the required form and content is contained on the Notice and given the dismissal of the Tenant's application I find that the Landlord is entitled to an order of

possession. I grant the Landlord an order of possession effective 1:00 p.m. on April 1, 2017.

Conclusion

The Tenant's application is dismissed.

I grant an Order of Possession to the Landlord effective 1:00 p.m. on April 1, 2017.

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: March 16, 2017

Residential Tenancy Branch