



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF, LRE, OLC, O

Introduction

This is an application brought by the tenant(s) requesting an order canceling a Notice to End Tenancy that was given for landlord use, requesting an order to suspend or set conditions on the landlord's right to enter the unit, requesting an order for the landlord to comply with the act, and requesting recovery of their filing fee.

Some documentary evidence and written arguments have been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All parties were affirmed.

Issue(s) to be Decided

The main issue is whether to cancel or uphold a Notice to End Tenancy that was given for landlord use.

Background and Evidence

This tenancy began on March 1, 2014.

The landlord testified that on February 16, 2017 there was a major flood in the basement of the rental unit that caused extensive damage, and that he's been quoted a cost of \$30,000.00 to repair the damage caused by the flood, and a further \$25,000.00 to repair the foundation to avoid floods in the future.

The landlord further testified that he filed an insurance claim, but the claim was totally disallowed.

The landlord further testified that he cannot afford to have the repairs done by someone else, and therefore he's decided to do the work himself, and to be able to do that he plans to live in the rental unit while it's being done.

The landlord further testified that this is an extensive amount of work and it will certainly take him, at least, six months to do, if not substantially longer, and the best way for him to do this work is to live in the rental unit while the work is ongoing, as the work will be very disruptive and would be difficult to do if anyone but himself living was in the rental unit.

The landlord further testified that, due to the loss of use of a large portion of the rental unit, he has already reduced the tenants rent from \$1650.00 per month, to \$900.00 per month, and that financially it makes more sense for him to live in the rental unit and do the repairs rather than continue to rent it at such a low rent.

The landlord therefore requests that the Notice to End Tenancy be upheld, and that the tenant's application be denied.

The tenants testified that, originally, after the flood occurred, the landlord told us he wanted us to move out as he was no longer getting as much rent, and he could re-rent the upstairs of the house for \$2000.00 per month.

The tenants further testified that the landlord later said that he wanted us to move so he could renovate the upstairs of the house and sell the house. After we informed the landlord that the upstairs did not need renovations, he served us with the two month Notice to End Tenancy, stating that he was going to move into the rental unit. The tenants therefore stated that they do not believe this notice has been given in good faith.

The tenants testified that they do not believe that the landlord will move into the rental unit as he only comes back to town for 2 to 3 weeks, twice a year, and the rest of the year he works out of town.

The tenants are therefore requesting that the Notice to End Tenancy be canceled and that this tenancy be allowed to continue.

In response to the tenants testimony, the landlord stated that he did not say he would rent the house out to someone else, and he fully intends to move into the house to do all the repairs that are required, which are extensive. He further stated that he does work out of town however he will be living in the rental unit and doing the repairs when he is back in town.

In response to the claim that he's only in town 2 to 3 weeks twice a year, he stated that he never knows what his work schedule will be, however, last year he had a three-month period off work.

Analysis

It is my decision that the landlord has reasonable grounds to want to live in the rental unit. This unit suffered extensive damage due to a flood and the cost to have a contractor repair that damage would be exorbitant, especially since the insurance company has denied the landlords claim.

I accept the landlord's testimony that, since he can't afford to pay for the extensive repairs, he fully intends to live in the rental unit and do the repairs himself.

The tenants have argued that the fact that the landlord works out of town and therefore will not be living in the rental unit full-time makes no difference to the fact that the landlord will occupy the rental unit, and therefore the landlord's belongings will be in the rental unit.

The tenants have also alleges that the landlord told them he wanted them out so he could re-rent the place at a higher rent, however the landlord denies ever making such a statement. The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met.

It is my decision therefore that I will not cancel this Notice to End Tenancy, and, since this tenancy is ending, I will not be issuing any orders for the landlord to comply with the act, or the limit the landlords access to the rental unit.

This application is therefore dismissed.

Section 55 of the Residential Tenancy Act states:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

In this case I have examined the Notice to End Tenancy and it is my finding that it does comply with section 52 of the Act.

Conclusion

This application is dismissed in full, without leave to re-apply, and, having determined that the landlord's notice to end tenancy complies with section 52 of the Act, I have issued an Order of possession, for 1:00 p.m. on April 30, 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: April 12, 2017

Residential Tenancy Branch