



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNL FF

Introduction

Both parties and witnesses attended the hearing and gave sworn testimony. They confirmed the Notice to End Tenancy dated May 30, 2017 to be effective September 1, 2017 was served by putting it in the tenants' mailbox. The tenant /applicant gave evidence that they personally served the Application for Dispute Resolution and the landlord agreed they received it. I find the documents were legally served pursuant to sections 88(1) (f) for the Notice and 89 of the Act for the purposes of this hearing. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To cancel a notice to end tenancy for landlord's use of the property pursuant to section 49; and
- b) To recover the filing fee for this application.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that they need to end the tenancy in order to have the property for their own use? Or is the tenant entitled to any relief? Is the landlord entitled to an Order of Possession if the tenant is unsuccessful in the application?

Background and Evidence

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced August 1, 2008, rent is \$1420 a month plus $\frac{3}{4}$ of the utilities and a security deposit of \$675 was paid. The landlord served a Notice to End Tenancy for he stated that wanted to occupy the unit himself. Currently he lives in the basement and he said he was now in the financial position to take over the more roomy upstairs and enjoy his home.

The tenants were long term tenants with children and they were upset at how the landlord handled this matter. They said he could have engaged in dialogue and they could possibly have arranged to end the tenancy at a mutually agreed time. They said they doubted the landlord's intentions for he had speculated how he would build a house sometime and again, how he could move in with his Dad since his mother had an accident. The landlord agreed he had thought of different scenarios over the years but ultimately came to the conclusion that occupying the main part of his own home was the best solution. He said the last straw was when his car was broken into. He wants the main house and the garage again for his own.

The landlord's sister said she knew with certainty that her brother has full intentions of occupying the upper home himself. She said he understood the tenants were entitled to one free month's rent and he understood the consequences in the Act if he did not do what he stated in his reason for ending the tenancy. The landlord said he was unwilling to extend the effective date of the Notice to End Tenancy and asks for an Order of Possession effective on that date if the tenant is unsuccessful today.

Included with the evidence is the Notice to End Tenancy, statements from the parties, a new lease with a tenant to rent the basement suite where the landlord currently resides, photographs and documents showing the landlord's car broken into and costs to repair.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

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Analysis:

As discussed with the parties in the hearing, the onus is on the landlord to prove on a balance of probabilities that they have good cause to evict the tenant. I find the evidence of the landlord credible and I prefer it to the evidence of the tenant in respect to his intention to occupy the upper, main area of his home. I find certain events in his life coincided with his decision, his age, the lack of safety for his car when outside and a better financial picture. I find insufficient evidence of any bad faith as alleged by the tenants.

As explained to the tenants in the hearing, I find it not relevant that he is on his own in this bigger home or that some of their discussions touched on their finances or lifestyle. I find according to section 49 of the Act, the landlord has the right to serve a Notice to End their tenancy in order that he might occupy the unit himself.

For all of the above reasons, I dismiss the application of the tenant to cancel the Notice to End Tenancy. I find the tenancy is terminated on September 1, 2017. Section 55 of the Act provides that I may issue an Order of Possession to the landlord when the tenants' Application is dismissed. I find the landlord entitled to an Order of Possession.

Conclusion:

The Application of the Tenant to set aside the Notice to End Tenancy is dismissed. The tenancy is at an end on September 1, 2017. An Order of Possession is issued to the landlord effective September 1, 2017. I find the tenants not entitled to recover their filing fee due to lack of success.

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: July 04, 2017

Residential Tenancy Branch