Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CANADIAN GENERAL PROPERTY CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNL OPL FF

Introduction:

Both parties made Applications and both parties and counsel attended the hearing. The parties gave sworn testimony. The Notice to End Tenancy is dated June 26, 2017 to be effective August 31, 2017 and the tenant confirmed it was served personally on him. Both parties confirmed their respective Applications for Dispute Resolution were served by registered mail. I find the documents were legally served pursuant to sections 88 and 89 of the Act for the purposes of this hearing. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

a) To obtain an Order of Possession for landlord's use of the property pursuant to sections 49 and 55;
b) To recover the filing fee for this application.

The tenant applies pursuant to the *Residential Tenancy Act* (the Act) to cancel the notice to end tenancy for landlord's use of the property pursuant to section 49.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that the tenancy is ended pursuant to section 49 and they are entitled to an Order of Possession or is the tenant entitled to any relief? Is the landlord or tenant entitled to recover the filing fee?

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 in June 16, 2011, it is now a month to month tenancy, rent is $870 a month and a security deposit of $422.50 was paid. The landlord served a Notice to End Tenancy pursuant to section 49 of the Act for the following reasons:

a) The landlord intends to convert the rental unit for use by a caretaker, manager or superintendent of the residential property.

The landlord, represented by the building manager, gave evidence that they needed this particular suite for use by the relief caretaker. The tenant had been the Relief caretaker since June 2011 and he had moved from unit 202 to this unit when he took up the position. He resigned in August 2016 and the manager said she has had to do all the duties with no one to

relieve her since then. She needs another relief caretaker and has hired one. In answers to questions from Counsel, she confirmed she had no relief for the past year and that the relief caretaker must reside in the same building. There are 44 units and someone has to be there when she is not available. She said the tenant's suite has been designated as the relief caretaker's suite for the past 12 years. It is a nicer suite with more amenities such as an ensuite washer and dryer and patio, it has a reduced rent and compensation in recognition of the duties of relief caretaker. She said the suite was designated as the relief caretaker's because it is beside her own and they need to cooperate to arrange duties. It is also a nicer unit as described and this is an additional inducement to obtain a relief caretaker.

The tenant and his counsel pointed out that nothing in the signed lease or employment contract with the tenant said he had to leave the unit if he resigned his position. He has visiting children and the option of moving back to a one bedroom unit is not suitable.

Counsel submitted that the Notice to End Tenancy is issued in bad faith as it is only to benefit the manager and not the landlord. He pointed out that the only reason given by the landlord was that the suite was nicer and nothing in his subcontract agreement or lease specified the tenant had to vacate the unit if terminating his services.

The manager submitted that she issued the Notice in good faith for sure as she needs assistance so she can take holidays and have some days off. She is very tired after assuming both duties for a year. She notes the tenant moved from his other apartment to 401 when he assumed the duties of relief caretaker and his lease reflected the lower rent and compensation for the duties. She pointed out that the unit was designated 12 years ago for relief caretakers and has been used for that purpose during two relief caretakers prior to the tenant's. Some discussion was conducted about the rent. The new relief caretaker's rent will be $1400 a month, less $600 for compensation for their duties according to the lease they signed in August 2017 and they expect to begin duties in November 2017. This means their rent will be $800 a month which is less than the tenant is currently paying ($870 after his increase in December 2016).

Included with the evidence is a copy of the Notice to End Tenancy, lease agreements, subcontract agreement for relief caretaking and correspondence. 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 Two Month Notice to End Tenancy was in the correct form and specified a reason under section 49(6) which states *A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following: (e)*

convert the rental unit for use by a caretaker, manager or superintendent of the residential property.

I find the landlord has satisfied the onus. They proved on a balance of probabilities that they need the unit for the use of a relief caretaker. I find the manager's testimony credible that she desperately needs a relief caretaker and the tenant's unit, which is a nicer unit with more amenities, was designated for the use of a relief caretaker twelve years ago with reduced rent as an inducement. I find her evidence consistent with the facts which show that the unit has been used by the relief caretaker during the past 12 years, by two caretakers prior to the tenant who resigned from the duties in August 2016. I find her further reasons for the designation of this unit credible as it is beside her unit and most convenient for their cooperation and for tenants seeking assistance.

Counsel submitted that the manager's action was self serving and not in good faith.
I find Residential Policy Guideline # 2 addresses demonstration of good faith when a landlord ends a tenancy for landlord's use of property.

LEGISLATIVE FRAMEWORK

The Residential Tenancy Act[1] and the Manufactured Home Park Tenancy Act[2] allow a landlord to end a tenancy if the landlord intends in good faith to: …

- *provide the rental unit to a new caretaker, manager or supervisor, when the employment of the tenant has ended;*

GOOD FAITH REQUIREMENT

Good faith is an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage.

A claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End the Tenancy. If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive for ending the tenancy.

I find the landlord has satisfied the onus of proving they are ending the tenancy in good faith as they genuinely intend to do what is stated in the Notice to End Tenancy, that is have a relief caretaker reside in the unit. I find an honest intention with no ulterior motive. The fact that the unit was designated 12 years ago as a relief caretaker's unit, that is was so occupied until the present tenant resigned the position in August 2016 and that they will receive less rent from the new relief caretakers, after compensation deductions, than the tenant is presently paying all demonstrate to me that the landlord has no ulterior motive in ending the tenancy.

I dismiss the tenant's application to cancel the Notice to End Tenancy and uphold the landlord's application.

Conclusion:

The tenant's application is dismissed with no recovery of the filing fee. The tenancy ended August 31, 2017 in accordance with the Notice. In light of the fact that the tenant has resided in the unit since 2011, I find it reasonable to grant him some time to move. The Order of Possession will be effective October 31, 2017. Since the tenant has received free rent for August pursuant to sections 49 and 50, I find he is obligated to pay rent for September and October 2017 for over holding. I find the landlord entitled to recover the filing fee.

I HEREBY ORDER THAT the landlord may recover their $100 filing fee by deducting it from the tenant's security deposit.

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: September 20, 2017

Residential Tenancy Branch