



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNL

Introduction

This is the Tenants' Application for Dispute Resolution seeking to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property issued September 1, 2017 (the "Notice").

Both parties and the Tenants' advocate provided affirmed testimony at the Hearing.

It was established that the Tenants mailed the Notice of Hearing documents and their documentary evidence (a copy of the Notice) to the Landlord, by registered mail, on September 5, 2017. The Landlord did not provide any documentary evidence to the Residential Tenancy Branch or to the Tenants.

Issue(s) to be Decided

Is the Notice a valid notice to end the tenancy.

Background and Evidence

This tenancy began in December, 2014. Monthly rent is \$1,300.00, due on the first day of each month.

The Tenants provided a copy of the Notice in evidence. The Tenants received the Notice on September 1, 2017. The Notice provides the following reason for ending the tenancy:

The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse, or child, or the parent or child of the individual's spouse)

The Tenants testified that the Landlord told them that her mother is moving into the rental unit, but they do not believe that is the case. The Tenants stated that the Landlord tried to evict the Tenants in April, 2016, for cause, but was unsuccessful because she did not provide evidence to support her claim that the Tenants put her property at significant risk.

The Landlord denied that she told the Tenants that her mother was moving in. The Landlord testified that she is currently renting from her brother and that she wants to move into her own home. She stated that she has already given her brother notice that she is moving out.

Analysis

When a landlord seeks to end a tenancy, the onus is on the landlord to provide sufficient evidence, on the balance of probabilities, that the tenancy should end for the reasons provided on the notice to end tenancy. In the case where a tenant questions the “good faith intent” of the landlord, the landlord must also provide evidence that there is no ulterior motive for ending the tenancy. The Tenants’ Application for Dispute Resolution clearly sets out that the Tenants, “believe the Landlord is just trying to get us out by saying a family member is moving in and we don’t believe this”.

Residential Tenancy Policy Guideline 12 provides the following, in part:

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. This might be documented through: a Notice to End Tenancy at another rental unit; an agreement for sale and the purchaser’s written request for the seller to issue a Notice to End Tenancy; or a local government document allowing a change to the rental unit (e.g., building permit) and a contract for the work.

If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End 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.

[Reproduced as written.]

The Landlord provided no documentary evidence that she had provided notice that she was moving out of her current home, for example a copy of her notice to end her current tenancy. The Landlord provided no written or oral testimony from her brother (her current landlord) that she intends to move out of her current home.

For the reasons provided above, I find that the Landlord has failed to provide sufficient evidence that the tenancy should end for the reason provided on the Notice. I also find that the Landlord failed to establish that she does not have another purpose for seeking to end the tenancy.

Conclusion

The Tenants' Application is granted. The Two Month Notice to End Tenancy for Landlord's Use of Property issued September 1, 2017, is cancelled.

The tenancy will remain in effect until it is ended in accordance with the provisions of the Act.

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 26, 2017

Residential Tenancy Branch