



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the “Act”), to cancel Two Month Notice to End Tenancy for Landlord’s Use of Property (the “Notice”) issued on September 16, 2017.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlords have the burden of proving sufficient evidence to terminate the tenancy for the reason given on the Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Preliminary and procedural matters

The parties were informed at the start of the hearing that it is not my responsibility to determine if the tenant has better qualification than the caretaker hired by the landlords. The landlord has the right to hire whoever they determine is appropriate. The parties were informed I would not consider any evidence related to the qualifications of either the tenant or the caretaker.

Issue to be Decided

Should the Notice be cancelled?

Background and Evidence

The tenancy began in 2015. Rent in the amount of \$750.00 was payable on the first of each month. The tenant paid a security deposit of \$375.00.

The parties agreed that the Notice was served on the tenant indicating that the tenant is required to vacate the rental unit on November 16, 2017.

The reason stated in the Notice was that:

- The landlord intends to convert the rental unit for use by a caretaker, manager or superintend.

The article student for the landlord stated that the landlords purchased the property on September 16, 2017, which was the date the Notice was issued. The article student stated that the landlords are retired and purchased the property with the intention that it would be a horse ranch. The article student stated the landlords live in the main house and the caretaker will live in the house that the tenant is currently residing.

The tenant testified that if the landlords wanted to hire a caretaker, it would have made more sense for them to ask the purchaser for vacant possession of the property at the time they purchased the property.

The tenant testified that landlords want one of their friends to move into the property and act as the caretaker; however, this only became an issue when they believe the landlords' friend needed to find a place to live.

The article student for the landlord stated that in May 2017, when the landlord was considering purchasing the property it was always their intent to hire a caretaker and they had consulted with their insurance company to be ensured that any caretaker would be covered under their insurance policy. The article student stated that they did not ask the purchaser for vacant possession as the landlords were not prepared to deal with that issue at the time.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I have considered all of the written and oral submissions submitted at this hearing, I find that the landlords have provided sufficient evidence to show that:

The landlord intends to convert the rental unit for use by a caretaker, manager or superintend

In this matter, it is not for me to consider whether or not it is appropriate for the landlords to hire a friend to be a caretaker of the property, as the landlords have the right to hire any person they determine is appropriate.

However, it is for me to determine if the landlords' intent to convert the rental unit for the use of a caregiver.

In this case the landlords purchased the property to have a horse ranch and have hired a friend to act as the caretaker of the property. I find that is reasonable.

I find the tenant has not provided any evidence that would lead me to believe the landlords have an ulterior motive.

I find the Notice issued on September 16, 2017, has been proven by the landlords and is valid and enforceable.

Therefore, I dismiss the tenant's application to cancel the Notice.

As the landlords have accepted occupancy rent for the month of December 2017, I find it appropriate to extend the effective vacancy date in the Notice to December 31, 2017, pursuant to section 66 of the Act. Therefore, I find the landlords are entitled to an order of possession effective on the above extended vacancy date.

Since I have dismissed the tenant's application, I find that the landlords are entitled to an order of possession effective **December 31, 2017, at 1:00 P.M.** This order must be served on the tenant and may be filed in the Supreme Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

At the end of the hearing the tenant asked if they are entitled to remove gardens, plants and any other improvements that they made to the property. The tenant was cautioned that they are not entitled to remove any improvements that they have made and if they do so they could be held responsible for the loss as any improvement that are attached to the property become the property of the landlord.

Conclusion

The tenant's application to cancel the Notice, issued on September 16, 2017, is dismissed.

The landlords are granted an order of possession.

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 20, 2017

Residential Tenancy Branch