



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants 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 December 30, 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 has the burden of proving sufficient evidence to terminate the tenancy for the reasons 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.

Issue to be Decided

Should the Notice be cancelled?

Background and Evidence

The tenancy began August 2016. Rent in the amount of \$1,300.00 was payable on the first of each month. The tenants paid a security deposit of \$550.00.

The parties agreed that the Notice was served on the tenants indicating that the tenants are required to vacate the rental unit on March 31, 2018.

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The reason stated in the Notice was that:

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

Counsel for the landlord submits that the landlords have issued the Notice in good faith. Counsel states the landlord issued an early notice to end tenancy, but they noticed an error on the form and issued the Notice subject today's hearing.

Counsel submits the subject rental unit sits in an orchard. Counsel submits the landlord's son was hired to manage the orchard and will be residing in the subject rental unit as the caretaker.

Counsel submits that as they were not able to find sufficient local pickers the landlord had to make arrangements to bring in foreign workers. Counsel submits that the foreign workers will be living on the subject property in different areas and some will be housed in the subject property with the caretaker as they are required to have a caretaker on site.

The tenants testified that they agreed the landlord's son will be living in the subject property and supervising the foreign works. The tenants stated that even though they believe this to be true, the landlord will be able to collect rent from the foreign works which will add up to a significant amount of more rent. Therefore, they have an ulterior motive.

Analysis

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

In this case, both parties have filed a large amount of evidence that pertains to other Acts and Regulations, such as municipal bylaws. Those Act and Regulation are not for me to consider as my jurisdiction is the Residential Tenancy Act.

How to end a tenancy is defined in Part 4 of the Act. Section 49(1) of the Act a landlord may end a tenancy by giving notice to end the tenancy.

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 superintendent of the residential property

In this case, the tenants questioned the good faith of the landlords simply because the foreign workers may be charged a rent. The tenants do not deny the landlord's son will be living in the premises as the caretaker.

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 accept the evidence that the landlord's son will be moving in the subject premise as they were hired to oversee the orchard and the foreign workers that the landlord was required to hire.

Although some of the foreign workers may be housed in the subject property, along with the caretaker, and a modest rent may be collected; I find that alone does not prove an ulterior motive. I find there is no evidence that the landlords have an ulterior motive for ending then tenancy, such as personality conflicts with the tenants or any prior discussion of rent increases that were disputed with the tenants.

I find it is reasonable that the landlord's son would oversee the orchard and the foreign workers which is necessary for the orchard to be successfully maintained and harvested.

I find the Notice has been proven by the landlords and is valid and enforceable.

Therefore, I dismiss the tenants' application to cancel the Notice. The tenancy will end on March 31, 2018, in accordance with the Act.

As the tenancy legally ended on the effective date of the Notice, I find the landlords are entitled to an order of possession, pursuant to section 55 of the Act, effective **March 31, 2018, at 1:00 P.M.** This order must be served on the tenants and may be filed in the Supreme Court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

Conclusion

The tenants' application to cancel the Notice is dismissed. The landlords are granted an order of possession pursuant to section 55 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: March 13, 2018

Residential Tenancy Branch