



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ELWELL HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNL FF

Introduction

Both parties attended the hearing and gave sworn testimony. They confirmed the Notice to End Tenancy dated March 28, 2018 to be effective May 31, 2018 was served by posting it on the tenants' door. The tenant /applicant gave evidence that they served the Application for Dispute Resolution dated March 29, 2018 by registered mail and the landlord agreed they received it. I find the documents were legally served pursuant to sections 88 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 in August 15, 2006, it is now a month to month tenancy, rent is \$807.82 a month and a security deposit of \$335 was paid in July 28, 2006. The landlord served a Notice to End Tenancy for the following reasons:

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

The landlord gave evidence that the owners have 3 properties and they put up signs for vacancies in all the properties. Therefore signs for vacancies which the tenant photographed do not necessarily pertain to this property. He said they had one unit vacant in this property and it will remain vacant for they have some ongoing issues with the city and WCB on that unit. The owners have had concerns over the past six months of handling of garbage by the tenants and code violations and fire safety. The time for remote management to deal with the issues was so great that it warranted the hiring of an onsite caretaker. They have hired one to begin on July 1, 2018 to reside in the tenant's unit. An offer and acceptance of the caretaker is in evidence. In evidence is also a list of tenancies in the building showing only one vacancy which was discussed by the landlord.

The tenant maintained that the landlord had other vacancies and did not need to end their tenancy. He said he is not sure of the good faith of the landlord and went on to make some complaints about snow removal.

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.

Section 49 of the Act provides several grounds for ending a tenancy. One of them is that the landlord needs to convert the rental unit for use by a caretaker, manager or superintendent of the rental property. I find the evidence of the landlord credible and I prefer it to the evidence of the tenant in respect to the need and intention of the landlord to convert the suite for a caretaker's use. I find the weight of the evidence is that the landlord feels the need of an onsite caretaker due to growing concerns with the building and the time it takes for remote management to handle the issues. The landlord's credibility is supported by the engagement of an onsite caretaker to commence on July 1, 2018. I find there is only one vacancy in the building which cannot be used at this time due to ongoing issues with the city and WCB so I find the landlord needs this tenants' unit for the caretaker. I find insufficient evidence of any bad faith or ulterior motivation of the landlord.

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 May 31, 2018 pursuant to the Notice to End Tenancy. Section 55 of the Act provides that in these circumstances, the

landlord is entitled to an Order of Possession. The landlord has requested that an Order of Possession be issued effective June 30, 2018. The parties agree they understand the tenant is entitled to one month free rent pursuant to sections 49 and 51 of the Act.

Conclusion:

The Application of the Tenant to set aside the Notice to End Tenancy is dismissed. No filing fee is awarded to the tenant due to lack of success. The tenancy is at an end on May 31, 2018. An Order of Possession is issued to the landlord effective June 30, 2018.

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: April 26, 2018

Residential Tenancy Branch