



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNL; OLC

Introduction

This is the Tenant's Application for Dispute resolution seeking to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property issued April 6, 2018 (the "Notice") and for an unspecified Order.

Both of the parties attended and gave affirmed testimony at the Hearing which took place by teleconference. The hearing process was explained and the parties were given an opportunity to ask questions about the process.

It was determined that the Tenant served the Landlord with the Notice of Hearing documents and that the parties each provided the other party with copies of their documentary evidence.

Issue(s) to be Decided

Is the Notice a valid notice to end the tenancy?

Background and Evidence

This tenancy began on November 1, 2017. The tenancy agreement is between the Tenant and another landlord. Monthly rent is \$725.00, due on the first day of each month. The Tenant paid a security deposit in the amount of \$300.00. The Landlord JG purchased the rental property on December 15, 2017 and inherited the tenancy from the previous landlord. The Landlord lives in the main suite of the rental property. The rental unit is a basement suite.

The Tenant gave the following testimony:

The Tenant acknowledged that he received the Notice on April 6, 2018. The Notice gives 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 of child of that individual's spouse)."

The Tenant stated that on February 15, 2018, the Landlord told him he could stay if he paid \$1,200.00 per month. He testified that he told the Landlord that it was illegal to raise the rent that much and that he could not afford it. The Tenant stated, "later she informed me that I could stay in the suite at \$750.00 a month".

The Tenant testified that on February 19, 2018, he was given a notice that the Landlord's brother and sister-in-law were moving in. A copy of that letter was provided in evidence, which provides:

Hope you are doing well. The reason I am writing you today is to discuss about the two bedroom rental unit which you are living in.

I do understand that you are living in this unit from last few months. But, now I need this unit for my own family. Actually, my brother and my sister-in-law have come here to visit us from India and I am expecting one or two more guests in coming month. Right now, we are 7 people living in one place and it is quite difficult to accommodate so many people at one place. It is even harder when living with two small kids. So, I request you to vacant this rental unit till March 15th, 2018.

I hope you would understand my point of view and I would really appreciate your co-operation.

I am looking forward to hearing from you.

Thank you.

The Tenant stated that he was later advised that he could stay.

The Tenant testified that on April 6, 2018, he was served with the Notice. He stated that he was told that the Landlord BG would be renting the suite to her brother and sister-in-law. He submitted that these family members are not included in the definition of "close family member",

The Landlord gave the following testimony:

The Landlord denied that he told the tenant that he was increasing the rent to \$1,200.00 a month. He stated that his mother, brother and sister-in-law were moving to Canada and would be living in the rental unit.

The Landlord provided copies of two of his family members' electronic booking reference for their flights to Canada, dated April 26, 2018. The family members are the Landlord's mother and sister-in-law. The tickets show that they are departing from Delhi India on June 17, 2018 and returning to Delhi, India on November 27, 2018.

Analysis

Section 49 of the Act provides:

Landlord's notice: landlord's use of property

49 (1) In this section:

"close family member" means, in relation to an individual,

- (a) the individual's parent, spouse or child, or
- (b) the parent or child of that individual's spouse;

"family corporation" means a corporation in which all the voting shares are owned by

- (a) one individual, or
- (b) one individual plus one or more of that individual's brother, sister or close family members;

"landlord" means

- (a) for the purposes of subsection (3), an individual who
 - (i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and
 - (ii) holds not less than 1/2 of the full reversionary interest, and
- (b) for the purposes of subsection (4), a family corporation that
 - (i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and
 - (ii) holds not less than 1/2 of the full reversionary interest;

"purchaser", for the purposes of subsection (5), means a purchaser that has agreed to purchase at least 1/2 of the full reversionary interest in the rental unit.

(2) Subject to section 51 [*tenant's compensation: section 49 notice*], a landlord may end a tenancy for a purpose referred to in subsection (3), (4), (5) or (6) by giving notice to end the tenancy effective on a date that must be

- (a) not earlier than 2 months after the date the tenant receives the notice,
- (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and

- (c) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.
- (3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.
- (4) A landlord that is a family corporation may end a tenancy in respect of a rental unit if a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.
- (5) A landlord may end a tenancy in respect of a rental unit if
 - (a) the landlord enters into an agreement in good faith to sell the rental unit,
 - (b) all the conditions on which the sale depends have been satisfied, and
 - (c) the purchaser asks the landlord, in writing, to give notice to end the tenancy on one of the following grounds:
 - (i) the purchaser is an individual and the purchaser, or a close family member of the purchaser, intends in good faith to occupy the rental unit;
 - (ii) the purchaser is a family corporation and a person owning voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit.
- (6) 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:
 - (a) demolish the rental unit;
 - (b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant;
 - (c) convert the residential property to strata lots under the [Strata Property Act](#);
 - (d) convert the residential property into a not for profit housing cooperative under the [Cooperative Association Act](#);
 - (e) convert the rental unit for use by a caretaker, manager or superintendent of the residential property;
 - (f) convert the rental unit to a non-residential use.
- (7) A notice under this section must comply with section 52 [*form and content of notice to end tenancy*].
- (8) A tenant may dispute a notice under this section by making an application for dispute resolution within 15 days after the date the tenant receives the notice.
- (9) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (8), the tenant
 - (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

[Reproduced as written.]

Further to the provisions of Section 49 (2) of the Act, I find that the effective date of the Notice is June 30, 2018.

The Landlord seeks to end the tenancy pursuant to the provisions of Section 49(3) of the Act. The Landlord's brother and sister-in law do not meet the definition of "close family member" as defined by Section 49(1) of the Act; however, the Landlord's mother meets that definition.

The evidence provided by the Landlord shows that the Landlord's mother is visiting Canada from June 17, 2018 to November 27, 2018, which is a period of approximately 5 1/2 months. The effective date of the end of tenancy according to the Notice is June 30, 2018, which means that the Landlord's close family member would be occupying the rental unit for less than 5 months.

Section 49 of the Act is not intended to be used when a close family member is temporarily visiting (i.e. not occupying the rental unit for at least 6 months). Removal of a tenant from his home for the purposes of providing temporary accommodation to a close family member is not allowed by the Act. In fact, Section 51 of the Act provides for compensation to the Tenant in the event that the close family member does not occupy the rental unit for a period of at least six months.

Section 51 of the Act provides:

Tenant's compensation: section 49 notice

51 (1) A tenant who receives a notice to end a tenancy under section 49 [*landlord's use of property*] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(1.1) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(2) In addition to the amount payable under subsection (1), if

(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or

(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

[Reproduced as written. My emphasis added.]

I find that the Notice is not a valid notice to end the tenancy for the reasons provided above. The Tenant brought into question the “good faith intent” of the Landlord. I have cancelled the Notice for the reasons provided above and therefore make no finding with respect to the Landlord’s good faith intent.

Conclusion

The 2 Month Notice to End Tenancy for Landlord’s Use of Property issued April 6, 2018 is cancelled. The tenancy will continue until it is ended in accordance with the provisions of Section 44 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: May 31, 2018

Residential Tenancy Branch