



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

This hearing was convened in response to an application by the Tenant pursuant to section 49 of the *Residential Tenancy Act* (the “Act”) for an order cancelling a notice to end tenancy. The Landlords and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Landlord confirms that the Landlord’s email as provided in the application is correct.

Issue(s) to be Decided

Does the Landlord or a close family member of the Landlord intend in good faith to occupy the unit?

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Relevant Background and Evidence

The following are agreed facts: The tenancy under written agreement started on December 1, 2018. Rent of \$750.00 is payable on the first day of each month. On July 25, 2019 the Landlord served the Tenant with a two month notice to end tenancy for landlord’s use. The reason stated on the Notice is that the Landlord or a close family member of the Landlord will occupy the unit.

The Owner states that it has sole ownership of the unit located on farming property purchased a year ago. The Owner confirms that the person named as Landlord in this

application is the husband of the Owner and is the sole Landlord named on the tenancy agreement. The Owner states that her sister who currently resides out of country will be moving into the rental unit in a month to help the Landlord and owner with the farming business. The Owner states that no flights have been purchased for the sister's move. The Owner states that the Landlord's brother and father will also be coming from out of country to help however these persons will be residing with the Landlord and Owner and not in the rental unit. The Tenant states that it does not believe that the Landlord intends to have a close family member occupy the unit as 3 or 4 months ago the Landlord informed the Tenant that the Landlord wanted the Tenant to move out as they want to rent the unit for greater rental payment. The Tenant states that the Landlord has also attempted to end the tenancy on two previous occasions by issuing notices to end tenancy for cause. The Tenant states that it was successful in previous hearings and that those notices were found to be invalid.

Analysis

Section 49(3) of the Act provides that 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. Section 49(1) of the Act provides that a "close family member" means in relation to an individual, the individual's parent, spouse or child, or the parent or child of that individual's spouse. Given the Landlord's evidence that the Landlord's sister-in-law, the Owner's sister, will occupy the unit and as neither a sister-in-law or a sister are included in the definition of a "close family member", I find that the Landlord has not substantiated that the stated reason on the Notice is valid or that the Landlord or a close family member of the Landlord has a good faith intention to move into the unit. As a result, I find that the Tenant is entitled to a cancellation of the Notice and the tenancy continues.

Conclusion

The Notice is cancelled, and the tenancy continues.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: September 17, 2019

Residential Tenancy Branch