



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

In this dispute, the tenants seek an order cancelling a Two Month Notice to End Tenancy for Landlord's Use of Property (the "Notice") under section 47 of the *Residential Tenancy Act* (the "Act").

The tenants applied for dispute resolution on March 12, 2020 and a dispute resolution hearing was held, by way of telephone conference, on May 7, 2020. The landlord and one of the tenants attended the hearing, were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

While neither party raised issues with respect to the submission evidence, I note that the landlord submitted two pages of documentary evidence two days before the hearing, and, they confirmed that they had not provided a copy of this evidence to the other side. As such, I cannot accept and will not consider the landlord's documentary evidence as it was not provided to the tenants as required by Rule 3.15 of the *Rules of Procedure*, under the Act.

Issues

1. Are the tenants entitled to an order cancelling the Notice?
2. If not, is the landlord entitled to an order of possession of the rental unit?

Background and Evidence

The landlord testified that the tenancy started sometime in 2016. The rental unit is the basement, or ground level, of a residential home. The landlord and their mother live in the upstairs portion.

On March 7, 2020 the landlord served the Notice on the tenants in-person. (The tenant testified that they recalled receiving the notice on March 4, 2020.) A copy of the Notice was not submitted into evidence at the time of the hearing, but both parties were otherwise in agreement with the contents of the Notice. In addition, I requested the tenant to submit a copy of the Notice within 24 hours of the date of this hearing. The Notice was signed by the landlord and indicated that the tenancy end date would be May 4, 2020.

The Notice indicated, and the landlord testified that, they issued the Notice because they want their mother – who is wheelchair bound – to move into the rental unit. Mobility issues make it difficult for the mother to otherwise get around, and the rental unit would allow for greater mobility given that there are no stairs. This, the landlord testified, was the reason for the Notice being issued, and that they otherwise had “no problem” with the tenants.

The tenant argued that the landlord issued the Notice as a means to get the tenants out so that the landlord could re-rent the rental unit for higher rent. He further testified that the same thing happened to them four years ago, where rent was \$700 but then raised to \$1,025. The tenant continued by explaining that the landlord’s mother has been living upstairs, with a wheelchair, for the past four years, and asked, “what’s different now?” that would precipitate the Notice. He went on to say that there is no way the mother could live downstairs by herself, and that the small bathroom and “very small” kitchen would not allow for the mother to get around. In response, the landlord argued that the bathroom would be fixed up to accommodate their mother.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Where a tenant applies to dispute a notice to end a tenancy, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice is based.

In this dispute, the Notice was issued under section 49(3) of the Act which states 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.

In this dispute, the landlord argued that they intend to have their mother occupy the rental unit. The tenant disputes this claim and argued that the landlord merely wants to rent the unit out for a higher rent. Both arguments carry equal weight, as I draw no negative credibility inferences from either party.

When two parties to a dispute provide equally reasonable accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this case, I find that the landlord has failed to provide any evidence that they intend to actually have their mother move into the rental unit.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving the ground on which the Notice was issued. As such, I order that the Notice, served on March 4, 2020, is cancelled. It is of no legal effect or force, and the tenancy will continue until it is ended in accordance with the Act.

Conclusion

I hereby cancel the Notice dated March 4, 2020 and declare it to have no force or effect. The tenancy will continue until it is ended in accordance with 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 Act.

Dated: May 7, 2020

Residential Tenancy Branch