



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDCT

Introduction

The tenant applies to cancel a two month Notice to End Tenancy for landlord use of property dated July 1, 2020 and for a monetary award for unspecified reasons.

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only evidence that had been traded between the parties was accepted during the hearing.

Issue(s) to be Decided

Does the evidence presented at hearing show that the landlord has a lawful ground for ending the tenancy?

Background and Evidence

The rental unit is a two bedroom apartment. The tenancy started in November 2019 on a month to month basis. The current rent is \$900.00, due on the first of each month. The landlord holds a \$450.00 security deposit.

There is a written tenancy agreement. Neither party submitted a copy or was able to refer to it during this hearing.

The two month Notice, though dated July 1, was apparently served on the tenant by hand by Mr. F.C. on June 30. It has an “effective date” requiring the tenant to vacate by September 1.

It is agreed that Mr. F.C. has given the Notice to enable his brother to move in. He says the true landlord of this tenant is his aged father and that he, his brother and his sister hold power of attorney for their father's affairs, including the renting out units in this apartment building. Thus, he says, it is the son of the true landlord who will be moving in.

The tenant says Mr. F.C. is his landlord and has always has been.

Analysis

Section 49 of the *Residential Tenancy Act* (the "RTA") provides that a landlord may end a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. A "close family member" is defined as the individual's parent, spouse or child, or the parent or child of that individual's spouse.

Thus, if the landlord is Mr. F.C.'s father then Mr. F.C.'s brother would be a close family member of the landlord. If Mr. F.C. is the landlord then his brother would not come within the definition of being a close family member.

I allow the tenant's application and I cancel the Notice to End Tenancy.

First, and as stated at hearing, the initial burden of proof to establish the validity of the Notice falls to the landlord. In this case Mr. F.C. has not established that his father is the landlord. The fact that his father is the owner of the apartment does not make his father the landlord. Not infrequently owners assign the task of rental and management to agents without the owner ever being disclosed or named to a tenant.

In this case, simple production of the written tenancy agreement would have helped answer the question of who the landlord is. It was incumbent on Mr. F.C. to produce it.

Additionally, the Notice itself appears to name Mr. F.C. as landlord and it is signed by him as landlord, not as agent or as power of attorney for his father.

Second, the landlord must establish that the new occupant, Mr. F.C.'s brother in this case, has a good faith intention to occupy the rental unit. That evidence, which would normally come from the brother, was absent.

Conclusion

The tenant's application to cancel the two month Notice to End Tenancy dated July 1, 2020 is allowed.

The tenant's application for a monetary award is dismissed. He offered no basis for such an award in his application and he gave no evidence at hearing to support any such award.

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: August 04, 2020

Residential Tenancy Branch