



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

This hearing was convened in response to an application by the Tenants pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 49; and
2. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Are the Tenants entitled to a cancellation of the notice to end tenancy?

Are the Tenants entitled to recovery of the filing fee?

Background and Evidence

The Tenant states that the tenancy of a coach house started September 1, 2016 and that rent of \$1,000.00 is payable on the first day of each month. The Landlord states that it has no knowledge of when the tenancy started or how much rent is payable. The Parties agree that the Tenant was given a two month notice to end tenancy for landlord’s use dated May 26, 2021 (the “Notice”) with an effective date of July 31, 2021. The Parties agree the reason stated on the Notice is that the landlord intends to occupy the unit. The Parties agree that person named as landlord on the Notice is no longer the landlord (hereinafter referred to as the “Previous Landlord”).

The Landlord states that the coach house and main house on the property was purchased from the Previous Landlord and possession of the property was taken on September 1, 2021. The Landlord states that at the time of the Notice the Previous Landlord was occupying the main house and was going to occupy the coach house. The Landlord states that the Previous Landlord moved out of the main house in June 2021 and that renovations were then started on the main house. The Landlord states that it is now the Landlord's intention to occupy the coach house and that on August 31, 2021 the Previous Landlord served the Tenants with another notice to end tenancy for landlord's use setting out the reason that the purchaser intends to occupy the coach house. The Landlord states that the Previous Landlord no longer plans to occupy the coach house.

The Tenant states that this second notice has been disputed by the Tenant with a hearing set for January 25, 2021. The Tenant states that the Previous Landlord informed the Tenant at the time the Notice was served that they were not intending to occupy the coach house and that they had been asked by the Landlord to serve the Notice.

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. Given the undisputed evidence that Previous Landlord sold the property to the Landlord after serving the Notice, the Landlord's evidence that the Previous Landlord has no intentions of residing in the coach house and the Tenant's undisputed evidence that the Previous Landlord had no intentions of residing in the coach house at the time the Notice was served I find on a balance of probabilities that the Previous Landlord did not have a good faith intention to occupy the coach house and that Notice is therefore not valid for its stated reason. The Tenants are entitled to a cancellation of the Notice and the tenancy continues.

As the Tenants have been successful with their claim to cancel the Notice, I find that the Tenants are entitled to recovery of the \$100.00 filing fee and the Tenants may deduct this amount from future rent payable in full satisfaction of the claim.

Conclusion

The Notice is cancelled, and the tenancy continues.

I grant the Tenants an order under Section 67 of the Act for **\$100.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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 28, 2021

Residential Tenancy Branch