



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 Tenant 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

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

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The following are agreed or undisputed facts: the tenancy started on March 1, 2009. Rent of \$500.00 is currently payable on the last day of each month. No security deposit was collected. On September 20, 2021, the Tenant was given a two month notice to end tenancy for landlord’s use dated September 20, 2021 (the “Notice”). The reason stated for the Notice is the Landlord or the Landlord’s spouse. The unit is one of five rental units all located above stables.

The Landlord states that of the 20 original horses on the property only 3 are remaining. The Landlord states that they are focussing their family business on orchards. The Landlord states that the unit will be occupied by the Landlord as a home office and that they have no intention of renting the unit out for any amount of rent. The Landlord states that their farming operation has grown in the recent two years and that the Landlord, and their family members are doing the increasing work. The Landlord states that the business books have been done over the years off the kitchen counter and that with the growth of the operation that space is no longer sufficient. The Landlord states that the unit provides a view of the operation and driveway so that the Landlord will have good visual access from the unit.

The Landlord states that with a hip issue the Landlord requires rests, and that the unit has sufficient space for both the rest and the use of a bathroom. The Landlord states that although the unit has stairs to climb the Landlord considers this climb exercise. The Landlord states that their large family, including several grandchildren, has also grown larger and the unit will provide extra space for family visits. The Landlord states that they also wish to get out of the rental business and that after the tenancy of one of the other rental units ended in December 2021 they have not rented and do not intend to rent that unit out. The Landlord states that they have no intention of ending any of the other remaining tenancies.

The Tenant states that the unit that is currently vacant is more suitable for the visual sight of the operation and that their own unit does not provide an easy view of the driveway. The Tenant states that some furnishings have been moved into the current vacant unit. The Tenant states that the other rented units also provide better visuals. The Tenant states that since the Notice was served the Landlord's spouse and daughter have been harassing the Tenant to move out of the unit. The Tenant also states that that the daughter had indicated that they could get more rent for the unit. The Tenant refers to text messages and provides these as supporting evidence. The Tenant states

that the relationship with the Landlord has soured as the Landlord wanted more rent from the unit.

The Tenant submits in an affidavit that prior to the Notice being served and on August 23, 2021, the Landlord gave the Tenant notice of the end of employment and eviction that was subsequently rescinded by the Landlord. The Tenant also provides a copy of a notice to end tenancy for cause and end of employment dated August 30, 2021, with an effective date of September 30, 2021.

The Landlord states that they wish to provide the Tenant with sufficient time to relocate should the Notice be upheld and seen an order of possession effective April 1, 2022.

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. Policy Guideline #2a provides that good faith requires an honest intention with no dishonest motive. Good faith means a landlord does not have an ulterior purpose for ending the tenancy, and they are not trying to avoid obligations under the RTA or the tenancy agreement.

It is undisputed evidence that one of the other units are currently vacant with no plans to rent this unit and that the other units, including the vacant unit, all have as good as or better views of the property. There is no evidence that the vacant unit is not suitable for use as a home office and extra family space. While the tenancy of this unit ended after the Notice was served, and I note that there is no evidence when these tenants gave their notice to end that tenancy, if the Landlord had only wanted a home office, I consider that this turn of events should have had some impact on continuing to seek the end of the tenancy for the Tenant. The Landlord made no submissions as to why this turn of event was not considered as a viable option to ending the Tenant's tenancy. In this context and given the Tenant's supported evidence that the Landlord sought to evict

the Tenant after the Tenant's employment ended and supported evidence that the Landlord was not pleased that the Tenant's rental rate was lower than market value, I find on a balance of probabilities that the Landlord's purpose in ending the tenancy is more likely related to the end of the Tenant's employment or the past dispute with the Tenant. For these reasons, I find on a balance of probabilities that the Landlord has not substantiated a good faith intention to end the tenancy for the purpose of occupying the unit for a home office or additional living space. The Tenant is therefore entitled to a cancellation of the Notice and the tenancy continues. As the Tenant has been successful with its claim, I find that the Tenant is entitled to recovery of the **\$100.00** filing fee and the Tenant 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 Tenant 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: February 23, 2022

Residential Tenancy Branch