



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

This hearing dealt with the tenant's application pursuant to section 49 of the *Residential Tenancy Act* (the *Act*) for cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord Use of Property (the 2 Month Notice). The landlord's agent CJ testified that the landlord handed the tenant the 2 Month Notice on December 26, 2011. The tenant said that she was handed the 2 Month Notice on December 30, 2011. I am satisfied that the landlord served this 2 Month Notice to the tenant in accordance with the *Act*. As the tenant applied for dispute resolution within 15 days of service of the 2 Month Notice on either December 26 or December 30, 2011, the difference in testimony between the parties as to the actual date of the service of the 2 Month Notice is of no consequence to the issues before me in this application.

The landlord's agent CJ confirmed that the tenant handed him a copy of her dispute resolution hearing package as the landlord's representative on January 8, 2012. I accept that the tenant served this package and her written evidence package to the landlord in accordance with the *Act*. The landlord provided no written evidence for this hearing.

At the hearing, the landlord's agent CJ asked for an end to this tenancy and an Order of Possession if the tenant's application for dispute resolution were dismissed.

At the commencement of this hearing, GC said that he intended to limit his role in this matter to one of translating for the landlord's agent CJ. He said that he did not intend to provide evidence himself. As the hearing proceeded, GC said that he had lengthy conversations with landlord's agent CJ prior to this hearing and understood the basis for the landlord's request for an end to this tenancy and an Order of Possession. It became apparent during the hearing that CJ had empowered GC to speak on CJ's behalf, and only seek translation when specific questions needed to be answered by CJ or when GC was uncertain regarding a particular point. As GC was not seeking input from CJ regarding most of the issues relevant to the tenant's application, I asked CJ and GC if GC was in fact acting on CJ's behalf as his agent at this hearing, due to CJ's limited understanding of the English language. Both CJ and GC agreed that GC was acting as

CJ's agent, and hence the landlord's agent. At this point, I swore GC in as a co-agent, the primary role that he played throughout this hearing.

Issues(s) to be Decided

Should the tenant's application to cancel the landlord's 2 Month Notice be allowed? If not, is the landlord entitled to end this tenancy on the basis of the 2 Month Notice and obtain an Order of Possession?

Background and Evidence

This periodic tenancy for one basement bedroom in what was operating as rooming house commenced on June 1, 2009. The tenant pays \$450.00 each month, payable in advance on the first of each month. She shares kitchen and washroom facilities with one other basement tenant. She gave undisputed evidence and a diagram showing that there is another vacant bedroom in the basement. The landlord continues to hold the tenant's \$250.00 security deposit paid on May 7, 2009.

The tenant testified that there were previously eight people living in this rental home. She said that at present five people live in this rental home, two downstairs and three others upstairs.

The tenant provided written evidence of a November 4, 2011 Order and Legal Notice issued by the municipality's Property Use Inspection Branch to the landlord. This Order noted that a recent municipal inspection discovered the following:

1. *An additional dwelling unit has been installed in the basement, without permits or approval.*
2. *The building is being occupied as a rooming house by eight (8) unrelated tenants and there are keyed door locks installed on all of the bedroom doors.*
3. *Interior alterations have been carried out to the main floor and the basement, including partition walls, plumbing fixtures and electrical work.*

This Legal Notice ordered the landlord to:

1. ***Cease occupying the building as a rooming house and remove the keyed door locks from all bedroom doors IMMEDIATELY;***

And

2. ***Restore the use of this building to a one family dwelling (this includes removal of the cooking facilities, overhead cabinets and all associated wiring and plumbing in the basement);***

And

3. ***Obtain the required permits for the interior alterations carried out to the main floor and the basement***

BY DECEMBER 5, 2011.

The landlord was also warned in that Order and Legal Notice that “failure to comply with this Order will result in the City pursuing legal action against you.”

The landlord’s 2 Month Notice stated that this rental unit was required because the unit will be occupied by the landlord or the landlord’s spouse or a close family member of the landlord or the landlord’s spouse. The landlord advised the tenant that his son was planning to occupy the entire basement after tenants vacated and necessary renovations were conducted to bring this property into compliance with the municipal Order issued on November 4, 2011. At the hearing, the landlord’s agent testified that the premises were required for the landlord’s son who is 22 or 23 years old and who is interested in living in the basement of this property, but without sharing any facilities with tenants. Landlord’s representative GC testified that he understood that negotiations have been ongoing with the other tenant who currently lives in the basement. The landlord anticipates that the other basement tenant will agree to be relocated to one of the rental units on the main floor of this rental building. He said that no new notice to end tenancy has been issued to the other basement tenant as the landlord is hopeful that this matter can be resolved with her by mutual agreement.

The tenant gave undisputed oral evidence that the landlord attempted to obtain an end to this tenancy recently on the basis of a 1 Month Notice to End Tenancy for Cause (the 1 Month Notice). She testified that she was successful in her application to cancel the 1 Month Notice as noted in a December 14, 2011 decision of a Dispute Resolution Officer (DRO) appointed under the *Act* (Residential Tenancy Branch File # 784066).

Analysis

Section 49 of the *Act* allows a landlord to end a tenancy when “the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.” The “good faith” requirement imposes a two part test. First, the landlord must truly intend to use the premises for the purposes stated on the notice to end the tenancy. Second, the landlord must not have a dishonest or ulterior motive as the primary motive for seeking to have the tenant vacate the residential premises.

If the “good faith” intent of the landlord is called into question, the burden is on the landlord to establish that he or she truly intends to do what has been stated on the 2 Month Notice, and that the landlord is not acting dishonestly or with an ulterior motive as the primary motive.

Although neither party entered a copy of the December 14, 2011 decision into written evidence, the landlord’s representatives did not dispute the tenant’s oral testimony that the landlord’s previous attempt to end this tenancy for cause was unsuccessful. I find

that sworn testimony provided at the previous hearing held twelve days before the landlord issued the 2 Month Notice is of relevance to the tenant's claim that the landlord is not acting in good faith in issuing the 2 Month Notice. For that reason, I find that it is relevant to consider the December 14, 2011 decision and have taken that decision into consideration in reaching my findings. That decision noted that the "landlord says the property has been recently purchased by them and they do not wish to be landlords any longer." At that hearing, the DRO stated that "the landlord says the building will be renovated and returned to a one family dwelling for use by the landlord and his family."

Within 12 days of the mailing of the December 14, 2011 decision, the landlord issued a new notice, this time a 2 Month Notice for landlord use. While this is somewhat consistent with the statement in the December 14, 2011 decision, the 2 Month Notice relies on the landlord's assertion that the landlord's son wishes to live in the basement of the rental unit once it is renovated and converted to a single rental unit.

Rather than hearing direct oral testimony or considering sworn affidavits or written evidence from either the landlord or the landlord's son, the landlord's representatives asked that the 2 Month Notice be allowed on the basis of their oral testimony that the landlord's son does in fact intend to move into the tenant's rental unit. Most of this oral testimony was provided by GC, who did not even know the name of the landlord's son, until he obtained it from CJ during this hearing. While landlord's agent CJ did provide the name of the landlord's son, XFS, he did not know his age. The only real details about the son's proposed occupancy of the tenant's current rental unit was that the son may use the rental unit to start looking for work in Vancouver, but would only do so if he can take possession over the entire basement of the current rental unit as he has no desire to share facilities with the landlord's tenants in the basement.

Although the landlord's representatives said that the landlord has plans to renovate the premises to bring it into conformity with the municipal Order and Legal Notice issued, they confirmed that they have not obtained any building permits or approvals to take any of these actions. They did not dispute the tenant's claim that the landlord has done little to comply with those portions of the November 4, 2011 Order that pertain to structural changes to the building. The landlord's representatives also provided nothing substantial to question the tenant's contention that the rental property is no longer in contravention of the municipal bylaw regarding the number of unrelated occupants in this building as there are now only five tenants living in this property.

The tenant observed that there is currently one vacant bedroom in the basement and another may become vacant if the existing other female tenant decides to relocate upstairs. With these other current rental units available and apparently legal under the

existing municipal bylaws, the tenant submitted that there was no real need for her tenancy to end to accommodate the landlord's son desire to live in the basement of this rental property.

I reject the tenant's claim that the existing bedrooms in the basement are sufficient to meet any legitimate desire of the landlord's son to live in the basement of this rental home. I accept that the landlord's son may not wish to share any of the basement facilities with her or any other tenant. However, the landlord has not entered into evidence any plans to renovate the basement of this building, nor has the landlord obtained any building permits for such work. In the absence of any written evidence in this regard, I accept the tenant's testimony that the landlord has not proven that the landlord needs to obtain the tenant's rental unit for the landlord's son.

I find that the landlord has not met the first of the two tests required to demonstrate that the 2 Month Notice was issued in good faith. Due to the lack of direct evidence from the landlord and the landlord's son, the absence of any real plans in place to conduct the renovations required to enable the son to occupy the tenant's rental unit, or any assurance from the son that he will actually reside in the entire basement of this rental property even if it were renovated, I find that the landlord has fallen far short of demonstrating that the landlord truly intends to use the premises for the purposes stated on the notice to end the tenancy. Consequently, I allow the tenant's application to cancel the landlord's 2 Month Notice with the effect that this tenancy continues.

As the landlord has not met the first test of demonstrating "good faith" in issuing the 2 Month Notice, there is no need for me to make a determination on the second test of whether the landlord has a dishonest or ulterior motive as the primary motive for seeking to have the tenant vacate the residential premises. However, the timing of this application, a few days after dismissal of the landlord's previous attempt to end this tenancy and the landlord's stated intent to comply with the municipal bylaws does lend an element of support to the tenant's claim that the landlord has ulterior motives separate from the stated reason for obtaining her rental suite so as to accommodate the landlord's son.

Conclusion

I allow the tenant's application to cancel the landlord's 2 Month Notice. This 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 *Residential Tenancy Act*.

Dated: January 20, 2012

Residential Tenancy Branch