



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a two month notice to end tenancy.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

The tenant has applied to cancel a two month notice to ending tenancy for landlord's use of property issued on February 24, 2012, and the effective date of the Notice was April 30, 2012. In a case where a tenant has applied to cancel a notice Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence and submission first, as the landlord has the burden of proving that the notice was issued for the reasons given on the Notice.

Issue(s) to be Decided

Should the two month notice to end tenancy issued on February 24, 2012, be cancelled?

Background and Evidence

The tenancy began in 2007. Rent in the amount of \$750.00 and utilities in the amount of \$200.00 was payable on the first of each month. A security deposit of \$425.00 was paid by the tenant.

The landlord testified the condominium she currently resides in has been listed for sale on the real estate market for a long period of time without any potential buyers.

The landlord testified on February 16, 2012, her real estate agent viewed the condominium and the subject rental property where the tenant resides to assess which property would be more saleable. The landlord states the property where the tenant resides is an acreage, the tenant's rental unit is over a garage and the main house is

rented to another party. The recommendation of the real estate agent was to upgrade the condominium. Filed in evidence is a letter from the landlord's real estate agent to that effect.

The landlord testified the flooring, kitchen and bathroom need to be fully renovated in the condominium. It was recommended that she not reside in the unit while the renovations are being completed. It was also recommended that she not move back into the unit when completed as the condominium will have a better chance of attracting a buyer if left unoccupied.

The landlord testified that she has received financing from a financial institution to have the renovations done to this accommodation. The landlord states no permits are required for the renovations. Filed in evidence is a letter of credit approval.

The landlord testified her spouse has recently passed away and the tenant's rental unit is perfect for her and she intends to occupy it indefinitely.

The tenant testified she is aware the landlord has had this condominium listed for sale for over a year. The tenant confirms the real estate agent was at the property on February 16, 2012.

The tenant testified that the landlord has issued two prior notices to end tenancy and the landlord was unsuccessful at both of those hearings. The tenant states the landlord has not issued this notice in "good faith". The tenant states, she is not sure what is motivating the landlord, but feels the landlord has wanted her off the rental property for the past year.

The landlord argues the two previous notices to end tenancy were issued as the occupants in the main house had issued complaints about the tenant and as a landlord she was acting on those complaints.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

When a tenant has filed to cancel a notice to end tenancy for landlord's use and calls into question the "good faith" requirement, the onus lies on the landlord to prove the two part test as follows:

1. The landlord must truly intend to use the premises for the purposes stated on the notice to end tenancy; and
2. The landlord must not have an ulterior motive as the primary motive for seeking to have the tenant vacate the rental unit.

The parties agree the landlord's condominium has been listed for sale on the real estate market for a long period of time.

The evidence of the landlord was she will not be living in the condominium during the renovations and has no plans to return as the unit is listed for sale.

The evidence of the landlord was she will require the premise where the tenant resides, as she intends to occupy the premise for her own use for an indefinite period of time. The evidence was the landlord spouse has passed away and the tenant's rental unit is perfect for her needs.

The documentary evidence from the real estate agent indicates that he viewed both properties and suggested the condominium would be a quick sale if renovated and left unoccupied.

The documentary evidence of the landlord from the financial institutes indicates the landlord has been approved for an equity loan subject to "for use to renovate the subject condo" [reproduced as written].

The evidence of the landlord was the two previous notices to end tenancy were issued due to complaints made by the occupants in the main house on the property and as a landlord she was obligate to act on those complaints.

The evidence of the tenant was that the landlord has not issued the notice in "good faith" and for some unknown reasons wants her off the property.

In this case, the reason stated in the notice to end tenancy is the landlord intends to occupy the rental unit for her own use.

I find the testimony of both parties confirms the condominium the landlord resides has been on the real estate market for an extended period. The documentary evidence from the real estate agent confirms the landlord's position that renovations are required for a successful sale of the property. The documentary evidence from the financial institute supports the landlord's claims to have the renovation completed as financing has been approved. The landlord evidence was she intends to occupy the premises

where the tenant currently resides for an indefinite period of time. Therefore, I find the landlord has proven part one of the test and intends to use the premises for the reason stated on the notice to end tenancy.

In this case, I have also considered the two prior decisions that related to the notices to end tenancy. There were no findings in either of those decisions that the landlord had a dishonest or ulterior motive for ending tenancy. The tenant suggested the landlord had an ulterior motive, however, there was no evidence of an ulterior motive during this hearing. Therefore, I find the tenant's allegation that the landlord is not acting in good faith has no merit and the landlord has proven step two of the test.

Therefore, I dismiss the tenant's application and I find the notice to be valid. The tenancy will end on April 30, 2012, in accordance with the Act.

Conclusion

The tenant's application is dismissed and the tenancy will end in accordance with the Act on April 30, 2012.

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 April 4, 2012.

Residential Tenancy Branch