



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNL, OLC, FF

Introduction

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenant, in which the Tenant applied to set aside a Notice to End Tenancy for Landlord's use of Property; for an order requiring the Landlord to comply with the *Residential Tenancy Act (Act)* or the tenancy agreement; and to recover the fee for filing this Application.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

On April 16, 2013 the Landlord submitted documents to the Residential Tenancy Branch, copies of which were served to the Tenant. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings.

On April 17, 2013 the Landlord submitted documents to the Residential Tenancy Branch, copies of which were served to the Tenant. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings.

On April 03, 2013 the Tenant submitted documents to the Residential Tenancy Branch, copies of which were served to the Landlord. The Landlord acknowledged receipt of the Tenant's evidence and it was accepted as evidence for these proceedings.

On April 04, 2013 the Tenant submitted documents to the Residential Tenancy Branch, copies of which were not served to the Landlord. As these documents were not served to the Landlord they were not accepted as evidence for these proceedings.

On April 17, 2013 the Tenant submitted documents to the Residential Tenancy Branch, copies of which were not served to the Landlord. As these documents were not served to the Landlord they were not accepted as evidence for these proceedings.

Issue(s) to be Decided

Should the Notice to End tenancy for Landlord's Use of Property be set aside and is there a need for an Order requiring the Landlord to comply with the Act?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began in 2003 or 2004; that there are four units in this residential complex; and that the Landlord lives in one of the units.

The Landlord stated that on April 02, 2013 she served a Notice to End Tenancy for Landlord's Use of Property to the Tenant's son, which declared that the Tenant must vacate the rental unit by June 01, 2013. The Tenant stated that she receive this Notice from her son on, or about, April 02, 2013.

The reason cited for ending the tenancy on the Notice to End Tenancy was that the Landlord intends to convert the rental unit for use by a caretaker, manager or superintendant of the residential property.

The Landlord stated that due to her age and medical condition she would like to hire a caretaker to do some of the necessary maintenance at the residential complex; she stated that she still does some work at the complex, but less than she has in previous years; that the caretaker would help her assess any problems with the residential complex and to repair them at her direction; that the caretaker will take care of the property if she is hospitalized; and that the caretaker will collect the rent if she is hospitalized or otherwise absent from the complex. The Landlord submitted a letter from a physician, in which the physician declares that the Landlord is not medically fit to maintain the property.

The Tenant stated that she has known the Landlord for many years and that she still continues to work around the complex.

The Landlord stated that she has not yet hired a caretaker; that she does not know how much she will pay the caretaker; and that she cannot begin looking for a caretaker until the rental unit has been vacated.

The Landlord and the Tenant agree that in December of 2011 the Landlord gave the occupant of unit "B" a Two Month Notice to End Tenancy for Landlord's Use of Property because she wanted a caretaker to live in the rental unit, and that the occupant of the rental unit vacated unit "B" in January of 2012.

The Landlord stated that after unit "B" was vacated she was unable to find a suitable caretaker for the residential complex. She stated that she rented unit "B" to a person who did some carpentry work for her, but has never acted as a caretaker for the residential complex. This declaration is inconsistent with the Landlord's written

submission, in which the Landlord declared that this individual has been “performing caretaking duties from the time he moved in”.

The Landlord submitted a letter, dated April 12, 2013, in which the occupant of unit “B” declared that he “agreed to do carpentry work and maintenance” on the unit and that he has agreed to do future work on an “as needed” basis.

The Tenant stated that she does not believe this person ever acted as a caretaker for the complex, although she understands he has done some carpentry work at the complex.

The Landlord stated that the occupant of unit “B” has recently told her that he can no longer work for her after May 07, 2013, due to medical reasons.

The Landlord and the Tenant agree that in March of 2013 the Landlord served the Tenant with a notice of rent increase which was to be effective June 01, 2013. The parties agree that after receiving the notice of rent increase the Tenant wrote a letter to the Landlord in which she outlined a variety of deficiencies with the unit/complex. The Landlord stated that after she received this letter she determined that she needed assistance with managing the rental unit.

Analysis

Section 49(6)(e) of the *Act* permits a landlord to end a tenancy if the landlord intends, in good faith, to convert a rental unit for use by a caretaker, manager, or superintendent of the residential property. After considering the evidence in its entirety, I find that there is sufficient reason to find that the Landlord is not ending this tenancy in good faith.

In determining good faith I was influenced, in part, by the fact that the Landlord has not yet advertised for a caretaker and she has not determined how much this individual would be paid. This causes me to question whether intent to hire a caretaker is genuine.

In determining good faith I was influenced, in part, by the Landlord’s testimony that the new caretaker will collect rent and take care of the property if the Landlord is hospitalized or otherwise absent from the complex. I find this to be highly speculative, given that there is no evidence that the Landlord is scheduled to be hospitalized or to be away from the complex. I find it difficult to believe that a landlord would hire a caretaker and only expect him/her to function as a caretaker in case of hospitalization or other short term absences.

In determining good faith I was influenced, in part, by the Landlord’s testimony that the caretaker would help her assess any problems with the residential complex and to repair them at her direction. I find it difficult to believe that a landlord would pay a caretaker for these tasks rather than hiring a contractor for such purposes, which would likely be less expensive.

In determining good faith I was heavily influenced by the undisputed evidence that in January of 2012 the Landlord ended a previous tenancy in this four-plex for the purposes of hiring a caretaker. If the Landlord's testimony that she was not able to find a caretaker after ending that tenancy so she hired a carpenter instead is true, then I am deeply concerned that the Landlord would again be unable to find an appropriate caretaker, given that she has not yet searched for a caretaker. More importantly, if this testimony is true, then I find that the Landlord already has a unit designated for a caretaker which is not being used by a caretaker and she should be using this unit for a future caretaker.

If the Landlord's written declaration and the written declaration of the person occupying unit "B", dated April 12, 2013, is true, then I find that the Landlord already has a caretaker. I find that one caretaker is sufficient for a four-plex in which one unit is being occupied by the Landlord and one unit is being occupied by a caretaker.

In determining this matter I have placed little weight on the Landlord's testimony that the occupant of unit "B" has recently told her he can no longer work for her after May 07, 2013, due to medical reasons. I find this is inconsistent with the written declaration of the occupant of unit "B", dated April 12, 2013, and is not corroborated by any additional documentary evidence.

In determining good faith I was influenced, in part, by the undisputed evidence that the Notice to End Tenancy was not served until after the Tenant provided the Landlord with written notice of a variety of deficiencies with the rental unit. I find it reasonably likely that the Landlord is ending the tenancy in retaliation for this list of deficiencies or in an attempt to avoid addressing the alleged deficiencies.

As I have determined that the Landlord is not ending this tenancy in good faith, I grant the Tenant's application to set aside the Two Month Notice to End Tenancy.

Conclusion

I authorize the Tenant to reduce one monthly rent payment by \$50.00, in compensation for the fee for filing this Application for Dispute Resolution.

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: May 02, 2013

Residential Tenancy Branch