Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes   CNL, FF

Introduction

This hearing dealt with an application by the tenant to cancel a notice to end tenancy for landlord's use and to recover the RTB filing fee.

Both the landlord and tenant attended the teleconference hearing and gave affirmed evidence.

Issue(s) to be Decided

Should the notice to end tenancy be cancelled?

Background and Evidence

The parties agree the tenancy started on August 1, 2012 and the tenant is obligated to pay $970.00 rent monthly in advance on the first day of the month. The tenant also paid a security deposit of $485.00.

The landlord gave evidence that the tenant was personally served with a Notice to End Tenancy for Landlord's Use (the "Notice") on February 27, 2014. The Notice specifies an effective date, or move-out date, of April 30, 2014. The Notice provides the following reason for ending the tenancy:
- The rental unit will be occupied by the landlord or the landlord's spouse or a close family member (father, mother, or child) of the landlord or the landlord's spouse

The landlord gave evidence that the rental building is owned by a corporation which is 100% owned by an individual. The landlord gave evidence that, at the time the Notice was served, the owning individual intended that one of his family members would move into the rental unit to act as resident manager.

The landlord's evidence is that, since the Notice was served, the landlord has hired a new resident manager who is not a family member. The landlord now wishes the new resident manager to move into the rental unit.

Analysis

When a landlord issues a notice to end tenancy for landlord's use and the notice is disputed by the tenant, the onus is on the landlord to prove the stated reason for ending the tenancy, on a balance of probabilities. If the landlord does not prove the stated reason for ending the tenancy, then I must cancel the Notice.

Section 49 of the Act governs the process for ending a tenancy for the landlord's use of the rental unit. I find that the landlord is a family corporation within the meaning of Section 49, because all the voting shares of the corporation are owned by one individual.

According to Section 49(4):

> "A landlord that is a family corporation may end a tenancy in respect of a rental unit if a person owing voting shares in the corporation, or a close family member of that person, intends in good faith to occupy the rental unit."

Although the person owning voting shares may have intended, at the time the Notice was served, that a close family member would occupy the rental unit, that situation changed soon afterward. I accept the landlord's evidence that it is no longer the landlord's intention that a close family member will occupy the rental unit. I find the landlord has not proven the stated reason for ending the tenancy. For that reason, I order that the Notice is cancelled.

Section 63 of the Act provides that the parties may settle their dispute in the hearing, and the director may record the settlement in the form of a decision or an order. Pursuant to this provision, discussion led to a resolution and it was specifically agreed as follows:

RECORD OF SETTLEMENT

1. That the tenant will vacate the rental unit by the end of the day May 8, 2014;
2. That the landlord will waive any rent payable by the tenant for the days she occupies the rental unit in the month of May 2014;

3. That the landlord will pay the tenant the sum of $970.00, which is the equivalent of one month's rent; and
4. That the tenant waives her entitlement to recover her RTB filing fee of $50.00 for this application.

Conclusion

The notice to end tenancy is cancelled. As the parties have settled the matters at issue, no further action is necessary and the file is closed.

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 06, 2014

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Residential Tenancy Branch