



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNL, FF

Introduction

This hearing was held in response to the tenant's Application for Dispute Resolution in which the tenant (applicant) has applied to cancel a 2 Month Notice to End Tenancy for Landlord's Use and return of the filing fee costs.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

Issue(s) to be Decided

Should the 2 Month Notice to End Tenancy for Landlord's Use issued on August 26, 2014 be cancelled?

Background and Evidence

The parties confirmed that the tenancy commenced eighteen years ago when the applicant moved into the rental unit with her spouse; the son of the landlord. The couple has 2 children who also live in the home. The applicant lives in the lower suite of a home; the landlord (her mother-in-law) lived in the upper portion of the home, until recently, when she moved in with a daughter.

Several years ago the applicant's marital relationship ended and her husband moved out of the home. There was agreement that the applicant and the 2 children could remain in the home, with the landlord residing in the upper portion of the home, until the son's finished high school. The applicant was to vacate this past June; as the sons have completed high school.

The applicant and her ex-spouse have never paid rent; they paid hydro, gas and cable costs. The applicant said that she and her mother-in-law shared the whole home; the applicant would use the bathtub in the upper unit; they shared the lower-level laundry

and the doors between the units were never locked; giving free access to all areas of the home.

The applicant said that she will vacate but cannot afford to do so at this time.

The landlord's son stated that the 2 units in the he home were separate and that they did not share the upper bathroom.

Jurisdiction

I have considered the definition of tenancy agreement as set out in section 3 of the Act:

***"tenancy agreement"** means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.*

Residential Tenancy Branch policy sets out factors that distinguish a tenancy agreement from a licence to occupy. Policy suggests:

A license to occupy is a living arrangement that is not a tenancy. Under a license to occupy, a person, or "licensee", is given permission to use a site or property, but that permission may be revoked at any time. Under a tenancy agreement, the tenant is given exclusive possession of the site for a term, which can include month to month. The landlord may only enter the site with the consent of the tenant...

If there is exclusive possession for a term and rent is paid, there is a presumption that a tenancy has been created. From the evidence before me I find that a tenancy was not created. There was no exclusive possession of the unit and no notice of entry was required if the landlord wished to enter the unit. I have come to this conclusion after also considering:

- the absence of payment of a security deposit;
- the fact that the applicant and her mother-in-law had access to the whole house;
- the applicant's use of the bathroom in the upper portion of the home; and
- that no fixed amount was paid for rent.

A significant element in my finding is the family and personal relationship that exists between the parties; where occupancy appears to have been given based on marriage and generosity. This is a factor that policy suggests should be weighed; and takes what I find to be a reasonable stance.

From the evidence before me I find, on the balance of probabilities, that the arrangement made eighteen years ago and, particularly when the applicant's spouse moved out of the home, was not a tenancy, but an agreement to share the home. Whatever was paid toward the costs of running the home was not intended as rent, but simply a contribution toward running the home.

Therefore, as a tenancy has not been created I decline jurisdiction.

Conclusion

Jurisdiction is declined.

This decision is final and binding and 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: October 30, 2014

Residential Tenancy Branch

