



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNL, OPT, FF

Introduction

This hearing dealt with the tenant's application for dispute resolution, seeking to cancel a notice to end tenancy issued by the landlord for the landlord's use of the property. The tenant also applied for an order of possession and for the recovery of the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

On January 15, 2016, the tenant amended her application to include an application for a monetary order for compensation in the amount of \$25, 000.00.

RTB Rules of Procedure 2.3 states that if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply. In this regard I find the tenant has applied for a monetary order for compensation. The landlord indicated that he received the package on January 15 and did not have adequate time to respond. As this section of the tenant's application is unrelated to the main section which is to cancel the two month notice, I dismiss the amended portion of the tenant's claim with leave to reapply.

The tenant has also applied for an order of possession. The tenant currently occupies the rental unit and therefore her application for an order of possession is moot.

Accordingly this hearing only dealt with the tenant's application to set aside the notice to end tenancy and for the recovery of the filing fee.

Issues(s) to be Decided

Has the landlord validly issued the notice to end tenancy? Does the landlord intend in good faith to use the rental unit to house a caretaker?

Background and Evidence

The tenancy started in May 01, 2014 for a fixed term of one year ending on April 31, 2015. The tenancy would continue on a month to month basis at the end of the fixed term. The rental unit is located on acreage. As of December 01, 2014, the parties entered into a rental agreement that included the house, cabin and a workshop. The current monthly rent is \$2,306 payable on the first of each month.

The landlord testified that he purchased the property in March 2014 with intent to run an agricultural based business. The property had structures that could be rented out until he was ready to start his business. The landlord testified that during the first year, he fenced the property and prepared the grounds for planting trees.

The tenant agreed that around 1,000 trees were planted in 2015 and that through the tenancy there were strangers on the property excavating and involved in the construction of the cidery. The landlord testified that he is currently preparing the grounds for additional trees to be planted when weather permits.

The landlord stated that he obtained a liquor licence for the cidery in October 2015 and that the business is ready to go into operation shortly. The landlord filed a copy of the liquor licence. The landlord stated that he and his spouse currently have full time jobs that they intend to keep until the business is fully running and financially viable. The landlord stated he decided that until then he would hire someone to live on site to accept deliveries and keep an eye on the property and cidery.

On November 26, 2015, the landlord issued the tenant a two month notice to end tenancy for landlord's use of property, to be effective on January 31, 2016. The reason for which the landlord gave the notice to the tenant is described as:

"The landlord intends to convert the rental unit for use by a caretaker, manager or superintendent of the residential property".

The tenant disputed the notice in a timely manner. The tenant stated that when she rented the property in 2014, she was aware of the landlord's plans to start a business, but was given to understand that the business would take 3-5 years to start and therefore she planned to live on the property for this length of time. The tenant also stated that she believes that the landlord has served her this notice in response to the complaints she made regarding the landlord or his agents entering the property without notice and leaving the gate open.

The landlord stated that he advertised by word of mouth that he was looking for someone who works from home and is available to live on site and to work part time for the landlord. After interviewing a few candidates, the landlord made a selection. The landlord filed a copy of the job description, the resume of the selected candidate and a job offer to the selected candidate. The letter is dated December 20, 2015 and states that the start date of the job will be confirmed in the upcoming weeks.

Attempts to reach an agreement were made but were unsuccessful. The tenant offered to move out by April 30, 2016. The landlord stated that he would agree to work with the tenant if the tenant agrees to drop her intention to claim for compensation against him. The parties discussed options at length but were unable to reach an agreement.

Analysis

Section 49 (6)(e) of the *Residential Tenancy Act* states that a landlord may end a tenancy in respect of a rental unit if the landlord intends in good faith to convert the rental unit for use by a caretaker, manager or superintendent of the residential property.

Upon review of the evidence and testimony of both parties, I find that the landlord purchased the property to run a cider based business. The landlord took steps to set up his business by installing a fence, planting 1,000 trees, preparing the grounds for additional trees, constructing a cidery, obtaining a liquor licence and hiring a resident caretaker.

When a tenant alleges bad faith on the part of the landlord, the landlord has an onus to prove he is acting in good faith. Based on the evidence in front of me and for the reasons listed above, I find that on a balance of probabilities, it is more likely than not that the landlord acted in good faith when he served the tenant with the notice to end tenancy for landlord's use of property. I further find that that on a balance of probabilities, it is more likely than not that the landlord wants to use the rental unit as a residence for a caretaker.

I find that the landlord has issued a valid notice and therefore I uphold the notice.

The landlord agreed to allow the tenant to occupy the residence until February 05, 2016 in the event I upheld the notice. Accordingly I grant the landlord an order of possession effective on February 05, 2016. This Order may be filed in the Supreme Court and enforced as an Order of that Court.

Conclusion

The notice to end tenancy is upheld. The tenancy will end on or before 1:00 pm on February 05, 2016.

Since the tenant applied to cancel the notice to end tenancy and has not proven her case, she must bear the cost of filing the application.

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 29, 2016

Residential Tenancy Branch

