



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF

Introduction

The tenant applies to cancel a two month Notice to End Tenancy for landlord use of property dated and received September 1, 2017.

Both parties attended the hearing, the landlord was represented by his son, and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Does the landlord have a good faith intention that he or a close family member will occupy the rental unit?

Background and Evidence

The rental unit is a four bedroom house. The tenant rents all but a one bedroom basement suite, which the landlord has rented to another.

The tenancy started in August 2014. The most recent tenancy agreement is for a one year term ending September 1, 2017 and then month-to-month. The monthly rent is currently \$1555.00. The landlord holds a \$750.00 security deposit.

The landlord's son Mr. R.P. testifies that the landlord intends that another of his sons, Mr. M.P. will be moving into the rental unit. Mr. M.P. is twenty five years old, unmarried, with no children. He currently lives at home with his parents. Mr. R.P. explains that Mr. M.P. will live in the rental unit with roommates, including a cousin.

The tenant doubts the landlord's good faith. He describes a lengthy renovation process that occurred in the home between April and June 2017. The rent was reduced to \$1200.00 for that period.

The tenant presents a letter from the landlord dated June 28, 2017 purporting to give the tenant two month's notice to vacate because the landlord wanted to conduct repairs and renovations to the home.

The tenant testifies that in or around June the landlord's wife demanded the tenant pay a \$200 per month rent increase. The tenant objected and the rent was raised by agreement to \$1555.00.

The tenant says that the landlord also gave him a verbal notice to leave a few months ago because the landlord wanted to sell the property. The tenant informed him that he would simply continue as a tenant of the new owner and so did not have to move out.

In response Mr. R.P. says the June 28 letter was sent because the landlord wanted to conduct renovations and repairs before his son Mr. M.P. moved in. He denies that the tenant was told he'd have to move because the landlord was thinking of selling the home.

Analysis

Section 49 of the *Residential Tenancy Act* permits a landlord to end a tenancy on two months' notice if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit. "Close family member" means the landlord's parent, spouse or child, or the parent or child of that landlord's spouse.

The ending of a tenancy is a serious matter. This rental unit has become the home of the tenant, his wife and two children. In order to substantiate the grounds for ending a tenancy, though the test is on a balance of probabilities, a landlord must provide clear and cogent evidence to substantiate his grounds.

In this case the tenant has raised certain facts that justify an aroused suspicion. While the evidence about the renovation work conducted between April and June is not in my view relevant, the landlord did attempt to evict the tenant by the letter of June 28, given for repair and renovation. This letter was given after extensive repairs and renovations had just been completed.

Further, the landlord attempted to increase the rent by \$200.00, a significant increase, and demanded the increase even during the life of the fixed term tenancy agreement. This evidence gives rise to a possibility that the landlord is secretly seeking to evict the tenant simply to allow a re-rental to a new tenant at a significantly higher rent.

Significantly, the landlord himself did not testify about his intention though he was present for the hearing and, according to Mr. R.P., speaks English. Only his son Mr. R.P. gave evidence. Equally significant, Mr. M.P. did not give any evidence, in person or otherwise, about his intention to move in or to offer his explanation of his intention to occupy a four bedroom house instead of, say, the existing basement suite.

Had the landlord and Mr. M.P. attended, testified and offered themselves for questioning, these concerns might easily have been addressed. But, without that evidence and in the face of the history presented at hearing, I am not persuaded on a balance of probabilities that the landlord has a good faith intention of having a close family member occupy this rental unit.

Conclusion

The tenant's application is allowed. The two month Notice to End Tenancy dated September 1, 2017 is cancelled and this tenancy continues.

As the tenant has been successful on this application he is entitled to recover the \$100.00 filing fee for this application. I authorize the tenant to reduce his next rent due by \$100.00 in full satisfaction of the fee.

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: November 29, 2017

Residential Tenancy Branch