



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution, seeking an order to cancel a two month Notice to End Tenancy for the Landlord's use of the rental unit.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues(s) to be Decided

Is the Notice to End Tenancy valid or should it be cancelled?

Background and Evidence

This tenancy began on November 1, 1993, with the parties entering into a written tenancy agreement. The rate of rent at the start of the tenancy was \$730.00, and the rent is currently \$962.00.

The subject rental unit is a penthouse style apartment of approximately 600 square feet, with approximately 600 square feet of outdoor patio, on the top of a three story building.

On April 26, 2011, the Landlord issued the Tenant a two month Notice to End Tenancy, with an effective end date of June 30, 2011, indicating the Landlord wanted to convert the rental unit for use by a caretaker (the "Notice").

The Tenant has disputed the Notice alleging the Landlord is not ending the tenancy in good faith.

The Agent for the Landlord, who is the current caretaker, testified he is resigning from the position and the Landlord is looking for a new caretaker. The Agent testified that he is currently living in a caretaker unit in the building which is attached to the office.

The Agent testified that the Landlord had considered many of the units in the building and has chosen the subject rental unit as the best rental unit to attract a new caretaker for a long term position.

The Agent testified that the Landlord recently spent a significant sum on a new roof for the building and wants to have a caretaker unit up on the roof because the Landlord needs a stronger management presence on the roof. The Landlords want to make sure the water does not pool on the roof and that bird droppings are cleaned in a timely manner.

The Agent further testified that the rental unit overlooks the garage entrance and that if renters lose their keys to the garage, when they call for help the caretaker could look over the side of the building and activate the garage door with a fob [remote control].

The Agent testified that the Landlord understands the considerable impact of moving on the Tenant. The Agent testified that there is no personal animosity towards the Tenant, but rather this is the decision of the corporate Landlord. The Agent testified that it had nothing to do with the rent in the subject unit.

The Tenant alleges the Landlord is acting in bad faith, and simply wants to achieve a higher rent for the unit or has a particular person in mind to move into the rental unit. He testified that the Landlord could get a substantially higher rent for the rental unit, which has very nice views of the city and mountains. He testified that the rental unit is the least expensive suite in the building, and that other units without a view rent at \$1,200.00 per month. The Tenant submitted evidence that the rental unit could possibly rent for \$1,500.00 to \$2,000.00 per month, as compared to the current rate of \$962.00.

The Tenant testified that the roof is accessible 24 hours a day, without requiring access through the subject rental unit.

The Tenant also alleged the Landlord is attempting to end the tenancy because he has been asking for repairs to be made to the deck outside the rental unit.

Analysis

Section 49(6) of the Act includes a provision that the Landlord must act in good faith in ending the tenancy.

Part 2 of the Residential Tenancy Policy Guideline includes the following explanation of the good faith requirement:

2. Ending a Tenancy Agreement: Good Faith Requirement

...

The "good faith" requirement imposes a two part test. First, the landlord must truly intend to use the premises for the purposes stated on the notice to end the tenancy. Second, the landlord must not have a dishonest or ulterior motive as the primary motive for seeking to have the tenant vacate the residential premises.

For example, the landlord may intend to occupy or convert the premises as stated on the notice to end. That intention may, however, be motivated by dishonest or undisclosed purposes. If the primary motive for the landlord ending the tenancy is to retaliate against the tenant, then the landlord does not have a "good faith" intent. Similarly, if the landlord is attempting to avoid his/her legal responsibilities as a landlord, or is attempting to obtain an unconscionable or undue advantage by ending the tenancy, the intent of the landlord may not be a "good faith" intent. Rather, the circumstances may be such that dishonesty may be inferred.

If the "good faith" intent of the landlord is called into question, the burden is on the landlord to establish that he/she truly intends to do what the landlord indicates on the Notice to End, and that he/she is not acting dishonestly or with an ulterior motive for ending the tenancy as the landlord's primary motive.

It is clear the Tenant has called the good faith intent of the Landlord into question here.

Based on the foregoing, the affirmed testimony and evidence and on a balance of probabilities, I find as follows:

I find the Landlord has insufficient evidence to prove they are ending this tenancy in good faith, and therefore **I allow the Application of the Tenant and order that the Notice is cancelled and is of no force or effect.**

Based on a balance of probabilities, I find it is unlikely that the Landlord truly intends to have a caretaker move into the most valuable rental unit in the building, in particular, when there is already a caretaker unit attached to the office of the building.

I find the Landlord provided insufficient evidence why the caretaker unit already established in the building and which is attached to the office for the building, is unsuitable to the extent that a Tenant of 18 years must be displaced for this purpose.

I further find, on a balance of probabilities, it is more likely the Landlord has an ulterior motive to end the tenancy in order to achieve a higher rent for the unit, as the Tenant has occupied it since 1993.

Therefore, the Application of the Tenant is allowed and I order that the Notice is cancelled. The tenancy will continue until ended in accordance with the Act.

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: June 08, 2011.

Residential Tenancy Branch