



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPL, CNL, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and to recover the filing fee for this proceeding. The Tenant applied to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property dated August 17, 2009.

Issues(s) to be Decided

1. Is the Landlord entitled to end the tenancy?

Background and Evidence

This tenancy started on November 1, 2005. On August 21, 2009, the Landlord's agent served the Tenant with a 2 Month Notice to End Tenancy for Landlord's Use of Property by posting it to her door. The Notice stated that "the rental unit will be occupied by the landlord or the landlord's spouse or a close family member of the landlord or the landlord's spouse."

The Landlord's daughter and her husband (who is the Landlord's agent) reside in the upper part of the rental property. The Landlord's agent said that at the beginning of August 2009, he asked the Tenant not to let her son play in the sprinkler due to water restrictions then in place. Despite this request, the Landlord's agent said he found the Tenant's son playing in the sprinkler the following day. The Landlord's agent said he asked her son not to play in the water and as he approached the Tenant, she accused him of scolding her son and made a number of derogatory remarks about him so he walked away and had no further contact with her until the 17th.

On August 17, 2009, the Landlord's agent said that he and his spouse went to the rental unit to deliver a Notice of Rent Increase and a laundry room schedule to the Tenant. The Landlord's agent said the Tenant refused to come to the door although he believed she was home. The Landlord's agent said they left and returned a half of an hour later and when the Tenant came to the door she grabbed the documents, told him if he ever entered the rental unit again she would have him charged, accused him of stealing her underwear from the laundry room, called him a "creep" and slammed the door. The Landlord's agent said both he and his spouse were rattled by this incident and as a result, they spoke to the Landlord about it.

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The Landlord's agent said that he, his spouse and the Landlord agreed that they could not live under these conditions and decided that they would no longer use the Tenant's suite as a rental unit. Consequently, the Landlord's agent said he served the Tenant with the 2 Month Notice on August 21, 2009.

The Landlord's agent said that on August 24, 2009, his spouse received a registered letter from the Tenant which contained false allegations of harassing and threatening behaviour and which accused him of entering her suite without notice. The Landlord's agent also claimed that when he and his spouse went to the rental unit on October 9, 2009 to do a suite inspection (after giving notice), the Tenant would not allow him to enter and threatened to call 911. The Landlord's agent said the following day the police arrived at the rental property and advised him that the Tenant had made a complaint about him. The Landlord's agent argued that the Tenant has been harassing him with this conduct.

The Tenant claimed that she had been tolerant of the Landlord's agent's "stalking behaviour" for some time but on August 3, 2009 after he was "aggressive" with her son, she had had enough and admitted to making derogatory remarks to him. The Tenant said that when the Landlord's agent and his spouse showed up at her door on August 17, 2009 to deliver a Notice of Rent Increase, they continued to "pound" at the door although she asked them to come back. The Tenant said she believed the Landlord's agent was becoming increasingly aggressive so she sent a letter to the Landlord and her daughter asking that the Landlord's agent not communicate with her any more. The Tenant claimed that after she sent this letter, she got the 2 Month Notice.

The Tenant said that she did not believe the Landlord's reasons for issuing the 2 Month Notice. The Tenant claimed that the suite had been used as a rental property since 1997 and she believed the Landlord relied on it as a source of income. The Tenant said that she believed the Landlord really intended to use the suite as a short term rental during the Olympics. The Tenant claimed that she wanted to move but wished to wait until after the Olympics were over at the end of March 2010 when more rentals would be available.

Analysis

Section 68(1) says that if a Notice does not comply with section 52, the director may amend the Notice if satisfied that the person receiving the Notice knew, or should have known, the information that was omitted from the Notice and in the circumstances it is reasonable to amend the Notice. The 2 Month Notice incorrectly refers to the Landlord's address as the Dispute Address. However the Tenant admitted that she knew the Notice was with respect to her rental unit and in the circumstances, I find that



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it is reasonable to amend the Notice accordingly. In all other respects, I find that the Notice complies with s. 52 of the Act.

RTB Policy Guideline #2 states that if the “good faith intent of a landlord (who gives a Notice) 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 and that he/she is not acting dishonestly or with an ulterior motive for ending the tenancy as the landlord’s primary motive.”

After hearing the evidence of both Parties, I am satisfied that the primary reason for the Landlord ending the tenancy is that the Parties relationship has broken down and the Landlord’s daughter and son in law no longer want to have to reside with others in the rental property. Consequently, the Tenant’s application to cancel the 2 Month Notice is dismissed and I find pursuant to s. 55(1) of the Act that the Landlord is entitled to an Order of Possession to take effect at 1:00 p.m. on October 31, 2009.

Pursuant to s. 50(2) of the Act, the Tenant will be entitled to her last month rent free or if she has already paid rent for October 2009, the Landlord will be required to refund that amount. Pursuant to s. 51(2) of the Act, if the rental unit is not used for the purpose set out on the 2 Month Notice for at least 6 months after the effective date of the Notice, then the Tenant may apply for compensation equivalent to 2 months rent.

As the Landlord has been successful in this matter, she is entitled to recover the \$50.00 filing fee for this proceeding and pursuant to s. 72 of the Act, she may deduct that amount from the Tenant’s security deposit.

Conclusion

The Tenant’s application is dismissed. An Order of Possession to take effect no later than October 31, 2009 has been issued to the Landlord. A copy of the Order must be served on the Tenant and may be enforced in the Supreme Court of British Columbia.

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: October 16, 2009.

Dispute Resolution Officer