



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNL, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenants to cancel a notice to end tenancy for the landlords' use of the property and a Monetary Order to recover the filing fee.

The tenant served the landlord in person on September 02, 2009 with a copy of the Application and Notice of Hearing. I find that the landlord was properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Has the tenant provided sufficient evidence that the Notice to End Tenancy can be cancelled?
- If not is the landlord entitled to an Order of Possession?
- Is the tenant entitled to recover her filing fee from the landlord?

Background and Evidence

Both parties agree that this tenancy started on August 01, 1978. This is a month to month tenancy and rent for this one bedroom unit is \$500.00 which is due on the 1st of each month. The tenant paid a security deposit of \$87.50 on July 08, 1978. The present landlord bought the building on August 27, 2007.

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The tenant states the landlord has attempted to raise the rent of her unit and asked the tenant to sign a new tenancy agreement. The tenant did this on August 29, 2009 but was concerned about it and felt the landlord had brought pressure to bear on her to sign it. The tenant testifies that the landlord gave her a Two Month Notice to End Tenancy on August 30, 2009. She was to vacate the rental unit by October 31, 2009. The reasons given on the notice were that the landlord wished to convert the unit for use of a caretaker or manager of the building. The tenant disputes this notice as she claims at the time there were two other suites in the building which were vacant. The tenant claims the landlord offered her a bachelor suite next door to her one bedroom unit which she could rent for the same rent she pays now. The tenant did not want to move into a bachelor suite and feels the landlord is being dishonest in her attempts to evict the tenant because she pays a low rent for her unit.

The landlords' agent confirms that they did ask the tenant to move into the bachelor suite as they require her unit for the new manager to oversee the exterior of the property. The view from the tenants unit will allow the manager to see the car park and the back lanes that run at the rear of the building. The landlords agent testifies that the building has suffered from transients coming onto the property and feel that with the manager residing in this unit she will be able to ensure the safety of the other tenants cars, the overall safety of the building and the mail boxes which are located in this area. The other suites which were vacant at the time were not suitable for the managers' use due to the location of the suites. One faces the front of the building and has now been let to a tenant who has renovated the suite himself and the other suite does not have a rear view which the landlord states is essential to the safety and security of the building and tenants.

The landlords' agent states that they do not want to evict the tenant because she pays a low rent as they have offered her alternative accommodation in the building at the same rent. The landlords' agent states that the manager has now agreed to move into the bachelor suite on a temporary basis until the tenants' suite is available. They state they will have to do some renovations to the suite before it is suitable for the manager to live in.

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The tenants witness lives in the building in at unit at the rear of the building on the ground level. She testifies that she can see everything in the car park and has not experienced any issues with tenant's cars or mail boxes. The landlord disputes the witnesses' testimony and states the witness lives on the ground floor and does not have an overall view of the car park and back lanes.

Analysis

The Residential tenancy Policy Guidelines #2 state that a landlord can issue a notice to end a tenancy if she intends in good faith to rent or provide the rental unit to a new caretaker, manager or superintendent of the residential property. The landlord must truly intend to use the premises for the person stated on the notice and must not have a dishonest or ulterior motive as the primary motive for seeking an end to the tenancy.

The tenant believes that the landlord does have a dishonest or ulterior motive to evict her from her rental unit and although a manager may move into her unit it is not the primary reason for the landlord ending her tenancy.

The tenant testified that the landlord wants to evict her because she is paying a low rent and the landlord has asked her to impose a rent increase herself. When she did not do that she was served with the eviction notice. The landlord on the other hand has offered the tenant alternative accommodation in the building but I find this accommodation is not comparable with the tenants existing rental unit as it does not have a separate bedroom and is a marginally smaller space. The landlord also told the tenant she could rent this unit at the same rent as her own unit.

When the "good faith" intent of the landlord is called into question, the burden is on the landlord to establish that she truly intends to do what she has indicated on the notice to end the tenancy and that she is not acting dishonestly or with an ulterior motive to end the tenancy.

I find the landlord has provided sufficient supporting reasons as to why she needs to end the tenancy in order for the new manager to occupy the suite and oversee the safety and security of



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the building and external areas. The tenant has given reasons why she should not be evicted. However I find the landlords' reasons legitimate for wanting to end the tenancy. The landlord has indicated that they are willing to give the tenant until the end of December, 2009 to enable her to find alternative accommodation if she does not wish to take their offer of the bachelor suite in the same building. Therefore, I uphold the Two Month Notice to End the Tenancy.

The tenant is entitled to compensation of the equivalent to one months rent pursuant to s. 51 of the *Act*. If steps have not been taken to accomplish the stated purpose for ending the tenancy within a reasonable period after the effective date of the notice or the rental unit is not used for that purpose for at least six months the landlord must pay the tenant an amount equivalent to double the monthly rent payable under the tenancy agreement.

Conclusion

The Tenant's application is dismissed. The two Month Notice to End Tenancy dated August 30, 2009 will remain in force and effect with the amended date as agreed by the landlord.

An Order of Possession has been issued to the landlord. A copy of the Order must be served on the tenant and the tenant must vacate the rental unit **on or before December 31, 2009**. The Order of Possession 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 20, 2009.

Dispute Resolution Officer