



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: CNL FF

Introduction

This hearing dealt with an application by the tenant to cancel a notice to end tenancy for landlord's use. Both the tenant and the landlord participated in the teleconference hearing.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Background and Evidence

The tenancy began on November 1, 2005 as a month-to-month tenancy. On September 21, 2009 the landlord served the tenant with a two month notice to end tenancy for landlord's use. The notice cited the reason for ending the tenancy as follows: "the rental unit will be occupied by the landlord, the landlord's spouse or a close family member (father, mother or child) of the landlord or the landlord's spouse."

The landlord's evidence supporting the validity of the notice was as follows. The landlord's stepson, who is the child of the landlord's spouse, intends to move into the rental unit as of December 1, 2009 and occupy it for at least six months. The landlord provided copies of statements from his stepson as well as his stepson's current landlord, both of which stated that the stepson would be vacating his current rental unit and moving into the tenant's rental unit on December 1, 2009. In the hearing the landlord verbally requested an order of possession.

The tenant's response to the notice to end tenancy was that she believed the landlord issued her the notice in ill will and that it was a retaliatory act. In the spring of 2009, the landlord informed the tenant that they were going to sell the property. A few weeks later the landlord changed their mind. At that time, the landlord gave the tenant a verbal commitment that she would be able to rent the premises with no rent increase for the next five years. Seven days before the landlord served the tenant with the notice to end tenancy, the tenant and the landlord had a verbal altercation. On the dated that the tenant received the notice, the landlord's spouse told the tenant that her son was moving into the rental unit. On October 4, 2009, the landlord told the tenant that they were actually going to sell the property, and that they also needed access to the property to do repairs.

Analysis

In considering the testimonial and documentary evidence of the landlord, it appears that the landlord does in fact intend for his stepson to occupy the rental unit, and that the notice to end tenancy is therefore valid. However, the tenant raised the issue of whether the landlord issued the notice in good faith. I therefore must consider whether the landlord's primary motive in issuing the notice was a good faith intention for a close family member to occupy the rental unit, or whether the landlord's primary motive was dishonest or in bad faith.

The first issue the tenant raised was her understanding of a verbal commitment by the landlord that the tenancy could continue for five years with no increase in rent. The landlord's response was that the written tenancy agreement was for a month-to-month tenancy only. Changes to material terms of a tenancy agreement can only be made by consent of both parties, and in the absence of a written agreement between the tenant and the landlord on this point, I find that the tenancy was strictly on a month-to-month basis.

The tenant also alleged that the landlord may have issued the notice with the intention not to have his stepson move in but to either sell or repair the property. Alternatively, the landlord may have been motivated by a bad faith intention to end the tenancy based on the acrimony between the tenant and the landlord. The landlord's response to both of these allegations was that he did intend for his stepson to move in.

There may have been acrimony between the landlord and the tenant that in some part motivated the landlord to end the tenancy, and the landlord may have voiced some thoughts about selling or repairing the rental unit. However, I found the landlord's evidence to be credible and uncontradictory regarding his primary intention to end the tenancy. I find that there was insufficient evidence for me to conclude other than that the landlord's primary motivation in serving the notice was a good faith intention for his stepson to occupy the rental unit. I therefore find that the notice to end tenancy is valid, and the landlord is entitled to an order of possession.

Conclusion

The tenant's application is dismissed. The tenant is not entitled to recovery of the filing fee for the cost of her application.

I grant the landlord an order of possession effective November 30, 2009. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Dated November 13, 2009.