



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNL, CNC, FF

Introduction

This matter dealt with an application by the Tenants to cancel a Notice to End Tenancy for Landlord's Use of Property dated October 26, 2009, to cancel a Notice to End Tenancy for Cause dated November 26, 2009 and to recover the filing fees for those applications.

Issues(s) to be Decided

1. Is the Landlord entitled to end the tenancy?

Background and Evidence

This tenancy started on March 5, 2009. There have been 2 previous hearings between these Parties. In the first hearing held on October 5, 2009, the Tenants applied to cancel a One Month Notice to End Tenancy that alleged (among other things) that there were an unreasonable number of occupants in the rental unit. In a decision issued on October 7, 2009, the Notice was cancelled due to insufficient evidence. In the second hearing held on November 27, 2009, the Tenants applied to cancel another One Month Notice that alleged that there were an unreasonable number of occupants in the rental unit. In a decision issued on November 27, 2009, the Notice was cancelled due to insufficient evidence. On or about November 27, 2009, the Landlord served the Tenants with a third One Month Notice to End Tenancy which again alleged that there was an unreasonable number of occupants in the rental unit.

The Landlord claimed that the Tenants have allowed a number of their relatives to reside in the rental unit. The Landlord said she believes this because she has seen these people often at the rental unit, because there are a number of vehicles parked at the rental unit and because the Tenants have refused to allow her access to the rental unit to inspect it. The Landlord also claimed that she received a Public Safety Inspection Report from the City of Coquitlam dated May 29, 2009 that stated that at the time of an inspection there were 16 people in the rental unit. The Tenants deny that there are more than 2 adults and 4 children residing in the rental unit but claim that they do have guests from time to time.

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The Landlord also served the Tenants on or about October 26, 2009 with a 2 Month Notice to End Tenancy for Landlord's Use of Property. That Notice alleged that the Landlord or a close family member of the Landlord would be occupying the rental unit. The Landlord said that she currently resides in Prince George but wants to live in the rental unit "off and on." The Landlord also said that she also wants her son (who works in Alberta) to have the use of it "from time to time."

The Tenants argued that the Landlord did not genuinely intend to live in the rental unit but instead just wanted to evict them. The Tenants claimed that the Landlord owns a house next door to the rental property and stays in the basement suite of that property whenever she visits the lower mainland. The Tenants also claimed that the Landlord uses this basement suite because it has access for her disabled son whereas the rental unit does not. The Landlord argued that the basement suite of the neighbouring property was too cold and that she has recently been diagnosed with Parkinson's disease.

Analysis

I find that the arguments and evidence relied by the Landlord in support of the One Month Notice are the same arguments and evidence she raised at the hearings held on October 5, 2009 and November 27, 2009. In the absence of any new evidence to support the One Month Notice dated November 26, 2009, I find that there is still insufficient evidence that the Tenants have allowed an unreasonable number of occupants to reside in the rental unit and as a result, the One Month Notice dated November 26, 2009 is cancelled.

RTB Policy Guideline #2 (Good Faith Requirement) states at p. 2 that "if the good faith of a Landlord (who issues a Two Month Notice to End Tenancy) is called into question, the Landlord must establish

- (a) that she truly intends to use the rental unit for the purpose set out on the Notice;
- (b) that she is not acting dishonestly or with an ulterior motive for ending the tenancy as her primary motive."

The Tenants argued that the Landlord's primary motive in giving them a 2 Month Notice was to evict them. The Landlord claimed that she intends to use the rental unit, however, she could not say that she intended to use it as her primary residence. The Landlord also claimed that she wanted her son who works in Alberta to have the use of the property but could not say when he might be residing in it.



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Having regard to all of the evidence, I find that the Landlord did not issue the 2 Month Notice to End Tenancy in good faith. In particular, I find that the Landlord's primary motive for issuing the Two Month Notice was to end the tenancy. I make this finding, in part, due to fact that the Two Month Notice was issued within the same period of time that the three One Month Notices were served on the Tenants.

I also find that neither the Landlord nor a close family member of the Landlord has any definite plans to reside in the rental unit. Furthermore, the Landlord did not provide any convincing evidence as to why she needed to reside "off and on" in the rental unit when she currently resides "off and on" in the basement suite in the neighbouring property. Consequently, the Tenants' application is allowed. The Two Month Notice to End Tenancy dated October 26, 2009 is cancelled and the tenancy will continue.

I order pursuant to s. 72 of the Act that the Tenants may deduct the \$100.00 fee they paid for filing their applications from their next rent payment when it is due and payable.

Conclusion

The Tenants' application is allowed. The Two Month Notice to End Tenancy for Landlord's Use of Property dated October 26, 2009 and the One Month Notice to End Tenancy for Cause dated November 26, 2009 are cancelled.

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: December 16, 2009.

Dispute Resolution Officer