DECISION

Dispute Codes CNL, OLC

Introduction

This hearing dealt with an application by the tenants for an order setting aside a notice to end this tenancy and an order that the landlord comply with the Act. Both parties participated in the conference call hearing.

At the hearing the tenant advised that she understood this process to be a discovery process prior to a formal hearing. When I advised the tenant that the conference call was the formal hearing, she requested an adjournment to provide her with further opportunity to bring evidence regarding the circumstances surrounding the beginning of the tenancy in June 2008. I declined to grant an adjournment for reasons which are explained in the analysis portion of this decision.

Both parties had witnesses which they had originally intended to call, but as the key elements of the claim were adequately addressed by the tenant C.J. and the landlord, I advised the parties that I would not require the testimony of their witnesses.

In this decision where the word “tenant” is used in its singular form it refers to the tenant C.J. who represented both tenants at the hearing. Where it is used in its plural form it refers to both tenants.

Issues(s) to be Decided

Does the landlord have grounds to end this tenancy?

Background and Evidence

The parties agreed that the tenant C.J. moved into the rental unit in June 2008. Both tenants and the landlord determined that the tenants would pay a high rent, a portion of which would be applied to a down payment in a rent-to-own scheme. The tenant R.R. did not reside in the property until December 2008. In or about December 2008 R.R. moved into the rental unit and the parties discussed ceasing the rent-to-own scheme. The parties agreed that rent would be set at $1,000.00 per month.

On January 31 the landlord served the tenant R.R. with a 2 month notice to end tenancy (the "Notice") which alleged that the landlord intended to reside in the rental unit. The landlord testified that it had long been her desire to move into the unit and that most of her furniture and many belongings were in the unit. The landlord testified that her current living situation would end on March 31 and that she had nowhere to live after that date if she were not permitted to reside in the rental unit again. There was some discussion at the hearing as to some confusion as to whether the landlord would be residing in the unit or whether she was renting it out, but the landlord clarified that her brother would be renting one room as a boarder and that she would indeed be living in the unit. The tenant accepted this explanation.

The tenant took the position that she and the tenant R.R. are not co-tenants but tenants in common, each residing in the rental unit under a separate tenancy agreement. The tenant argued that she should have received a separate notice to end tenancy rather than having been named as one of two tenants on the Notice. The tenant further argued that she was away from the unit on January 31 and did not return to the unit until February 1, at which time R.R. showed her the Notice and therefore should not be deemed to have received the Notice until February 1.

Analysis

The first issue which I must determine is whether the tenants are co-tenants or tenants in common. Co-tenants have equal rights under the tenancy agreement and are jointly and severally liable for any debts or damages relating to the tenancy. Tenants in common are tenants who share the same premises but do so under separate tenancy agreements with the landlord. The type of tenancy is at issue in this case for a number

of reasons. The tenant R.R. received the Notice on January 31. The tenant C.J. did not receive the Notice until February 1, when she returned to the rental unit after a period of absence. Also, only one Notice was served on both tenants together rather than each having been given their own Notice. If the tenants are tenants in common, then C.J. would have been entitled to receive a separate notice and such a notice could not have been effective until 2 full months after the date it was received by C.J., which would be April 30.

Having reviewed the circumstances surrounding this tenancy, I find that the tenants are co-tenants. I have arrived at this conclusion for the following reasons. When the tenancy first began in June 2008, the parties agreed that a portion of the rent was to be applied to a down payment in a rent-to-own scheme. Although R.R. did not reside in the rental unit at that time, he and C.J. were working cooperatively together in an effort to purchase the residential property. I find that the rent-to-own scheme gave the tenants an ownership interest in the property and that the tenancy therefore did not fall under the jurisdiction of the *Residential Tenancy Act*. It was for this reason that I refused to grant the tenant an adjournment to permit her further opportunity to bring evidence regarding the discussions which took place in June 2008 as I find that it would have been irrelevant as the parties agreed that a rent-to-own scheme was set in place at that time. In or about December 2008, when R.R. began residing in the rental unit, the rent-to-own scheme collapsed and the parties entered into an agreement whereby the tenants would begin paying one half of the previous amount in rent with no funds to be applied to a down payment. I find that the nature of the tenancy changed at that point, that the ownership interest dissolved and that in December 2008 the tenancy fell under the jurisdiction of the Act. Both tenants were residing in the unit at that time and each paid part of the rent. The parties agreed that the tenants would usually pay their rent separately to the landlord, but that on occasion when R.R. was away, C.J. would pay his half of the rent on his behalf. However I do not find that this means the parties had separate tenancy agreements. C.J. and the landlord both specifically testified that the rent was reduced to $1,000.00 in December 2008. Neither party stated that the rent was reduced to $500.00 for each tenant, but expressed the rent as a total amount due.

I find that the apportionment of the rent among the tenants does not establish separate tenancies.

Having found that the tenants are co-tenants, I find that service on the tenant R.R. is effective as against C.J. and accordingly I find that the tenants were served with the Notice on January 31. The effective date of the Notice, March 31, is therefore correct.

I find that the landlord has proven that she intends in good faith to occupy the rental unit. I accept that many of the landlord's belongings are already in the rental unit and that her current living situation will be ending on March 31. I find that the landlord has established grounds to end the tenancy and therefore decline to set aside the Notice. The tenants will be entitled be compensated in an amount equivalent to one month's rent. As the tenancy will be ending, it is unnecessary to address the tenants' second claim for an order that the landlord comply with the Act. The tenants' claims are dismissed.

During the hearing the landlord made a request under section 55 of the legislation for an order of possession. Under the provisions of section 55, upon the request of a landlord, I must issue an order of possession when I have upheld a notice to end tenancy. Accordingly, I so order. The tenants must be served with the order of possession. Should the tenants 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.

Conclusion

The tenants' application is dismissed in its entirety. The landlord is granted an order of possession effective March 31, 2010.

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: March 08, 2010.