



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes CNC, OLC

Introduction

This matter dealt with an application by the Tenant to cancel a 1 Month Notice to End Tenancy for Cause and for an order to have the landlord comply with the Act.

The Tenant's sister said she served the Landlords with the Application and Notice of Hearing (the "hearing package") by registered mail October 21, 2010. Based on the evidence of the Tenant's sister, I find that the Landlord was served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Is the Landlord entitled to end the tenancy and if so when?
2. Is the Tenant entitled to an Order to have the landlord comply with the Act?

Background and Evidence

This tenancy started on January 1, 2010, as a month to month tenancy. Rent is \$640.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$320.00 on December 18, 2009.

The Landlord said he served the Tenant with a 1 Month Notice to End Tenancy for Cause dated September 17, 2010. He served the Notice September 17, 2010, by posting it on the Tenant's door. The Effective Vacancy date on the Notice was October 31, 2010.

The Landlord said the Tenant has 3 or 4 people living in the unit and there is only 2 occupants authorized on the tenancy agreement. The Landlord said the Tenant has not applied for any additional occupants to live in the unit. As well the Landlord said there has been approximately 6 noise complaints from several different tenants prior to issuing the Notice to End Tenancy and there have been 2 to 3 complaints after issuing the Notice to End Tenancy. The Landlord said he is seeking to end this tenancy and requested an Order of Possession with an effective vacancy date of November 30, 2010.

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The Tenant's sister said the Tenant could not attend the hearing due to health reasons. She said that the Tenant does have 3 people living in the unit as her daughter B.A. is now living with her. She said the Tenant did not get authority to have an additional person living in the unit from the Landlord. As well the Tenant's sister said she does not disagree that there has been noise complaints, but the building is older and she said the sound proofing is poor. The Tenant's sister continued to say the tenant downstairs from the Tenant's unit is known to complain and does not like the Tenant. The Tenant's sister said there may have been TV noise when the Tenant's mother visits as she is hard of hearing, so the TV may have been on loud and other noises may be the result of creaking floors and the bedroom door as it is difficult to close so it bangs shut.

The Tenant's sister asked the Landlord if he had another unit that the Tenant could move into as she is going through a difficult time at present. The Landlord said he does not have any units with more bedrooms and he wants to end the tenancy with the Tenant for the reasons that he gave on the Notice to End Tenancy.

Analysis

Section 47 of the Act says a Landlord may end a tenancy for cause, which may include an unreasonable number of people in the unit or the tenant or occupants have interfered with or adversely affected the quiet enjoyment or unreasonably disturbed another tenant or the landlord.

From the testimony of both the Landlord and the Tenant's sister it was agreed that there is an unauthorized occupant in the unit. The Landlord said the unit is a 1 bedroom unit and with the additional occupant it is an unreasonable number of people in the unit and because of the number of people in the unit there have been noise complaints from a number of other tenants. As it is the Tenant's application it is her obligation to present proof that the Notice to End Tenancy for Cause is unjustified. From the Tenant's sister's testimony and the evidence submitted by the Tenant, I find that there is an unreasonable number of occupants in the unit and the noise complaints before and after the Notice to End Tenancy have disturbed the other tenants in the building therefore; I dismiss the Tenant's application to cancel the Notice to End Tenancy and the Order to have the Landlord comply with the Act with leave to reapply. As well, I grant an Order of Possession to the Landlord with an effective vacancy date of November 30, 2010.



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Conclusion

The Tenant's application to cancel the Notice to End Tenancy for Cause and an Order to have the Landlord comply with the Act is dismissed with leave to reapply.

An Order of Possession effective November 30, has been issued to the Landlord. A copy of the Orders must be served on the Tenant: 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*.