



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

CNL, RP, MNDC

Introduction

This Hearing was scheduled to hear the Tenant's application to cancel a Notice to End Tenancy for Landlord's Use; compensation for damage or loss; an Order that the Landlord make repairs to the rental unit; and to allow the Tenant to reduce rent for repairs, services, facilities agreed upon but not provided.

The parties gave affirmed testimony at the Hearing.

The Notice to End Tenancy was mailed to the Tenant at the rental unit, by registered mail, on November 25, 2010. The Tenant received the Notice to End Tenancy on November 26, 2010.

The Tenant served the Landlord with the Notice of Hearing documents by registered mail sent on December 7, 2010. The Landlord received the Notice of Hearing documents on December 8, 2010.

The Tenant provided the Landlord with copies of her evidence on December 15, 2010. The Landlord provided the Tenant with copies of its evidence on December 16, 2010.

Background and Evidence

The Landlord seeks to end this tenancy because it intends to convert the rental unit for use by a caretaker, pursuant to the provisions of Section 49(6)(e) of the Act.

The Tenant submitted that there are currently 2 vacant rental units (a one bedroom and a bachelor suite) available in the rental property which would be suitable for this purpose. The Tenant testified that another tenanted suite on the ground floor would also be suitable for occupation by a caretaker.

The Landlord owns two buildings in the area. The Tenant testified that the previous caretaker lived in a suite on the second floor of the other building.

The Tenant believes the Landlord is seeking to evict her in retaliation for her being successful in canceling a Notice to End Tenancy issued in August, 2010. The Tenant submitted that the Landlord issued the current Notice only 5 weeks after the former one was canceled. The Tenant testified that the Landlord's agent is harassing her by banging on her door and repeatedly phoning her. The Tenant stated that she called the police, who talked to the Landlord's agent and told him to communicate with her in

writing. The Tenant seeks compensation in the amount of \$5,000.00 for loss of peaceful enjoyment.

The Tenant submitted that the Contract entered in evidence between the Landlord and the new caretaker is fraudulent.

The Landlord's agent testified that the rental unit is the most suitable suite in the rental property because it is the only ground floor suite that overlooks all common entry doors and the mail room area. It is ideal for quick access to the fire panel, electrical and boiler room. It is located on the same floor as the laundry room, which has been the subject of break-ins in the past. The rental unit is also the best location for "drop ins" and for allowing the showing of other suites to prospective tenants. The rental unit is located next to the storage room, where the Landlord has had problems with occupants smoking and drinking alcohol.

The Landlord's agent testified that the previous caretaker lived in the other building because that is where he lived when he began working as a part-time caretaker. He held that position from March, 2007 to April, 2009. In October, 2009 a professional manager was hired to care for both buildings and to replace the previous on-site manager. There has been a re-structuring of building operations since the professional manager took over. It was decided that the best day-to-day needs of both buildings would be to have a full time resident caretaker on site to handle the maintenance and cleaning needs of both buildings. The Landlord's agent stated that in the past the rental unit was used by owners and managers of the building. Other suites were not used because they lack the features the rental unit has. The Landlord's agent stated that the Landlord is seeking to restore the rental unit to its previous use.

The Landlord's agent testified that the other tenanted suite the Tenant refers to does not have views of the lobby, but faces south to the river. The Landlord stated that there are no suites available in the rental property that would be suitable for the Tenant to move into, as they are on higher floors and the Tenant has mobility challenges that she herself has identified.

The Landlord's agent testified that the previous Notice to End Tenancy was for the Landlord to make renovations to the rental unit that would require the rental unit to be vacant. The Landlord still intends to make those renovations in order to make it ready for a resident caretaker. He stated that the Tenant's suite will need new carpeting and paint before the caretaker moves in, as the caretaker is a non-smoker.

The Landlord's agent was adamant that the contract of employment with the new caretaker is not a fraudulent contract and submitted that the Tenant's statement was inappropriate.

The Landlord's agent denied harassing the Tenant, and stated that he never banged on her door. He stated that he had left messages on her answering machine for her to call him back because he was attempting to reach an agreement with her without the necessity of coming to another Hearing. The Landlord testified that the Tenant did not return any of his calls. The Landlord's agent stated that he was happy to communicate with the Tenant in writing.

The Landlord's agent asked for an Order of Possession.

Analysis

Section 49(6)(e) of the Act allows a landlord to end a tenancy if the landlord has all necessary permits and approvals required by law to convert a rental unit for use by a caretaker. In this case, the Landlord does not require permits or approvals. The Landlord provided a copy of a Resident Building Caretaker Agreement, signed by the Landlord and the Resident Caretaker on December 3, 2010. The Agreement identifies the rental unit as the designated Caretaker's unit.

Based on the testimony and documentary evidence of both parties, I find it most probable that the Landlord intends in good faith to convert the rental property for use by a resident caretaker. The Tenant has not shown cause to cancel the Notice to End Tenancy issued November 24, 2010, and I find it is a valid Notice. I dismiss the Tenant's application to cancel the Notice to End Tenancy.

I hereby order the Landlord to return the Tenant's post-dated cheques forthwith.

The Tenant has not provided sufficient evidence for her claim of loss of peaceful enjoyment and this portion of her claim is dismissed.

The tenancy is ending and therefore I dismiss the Tenant's application for a rent reduction and for an Order that the Landlord make repairs to the rental unit.

Section 55(1) of the Act states:

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

(a) the landlord makes an oral request for an order of possession, and



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(b) the director dismisses the tenant's application or upholds the landlord's notice.

Based on the testimony of the parties, I am satisfied that the Tenant received the 2 Month Notice to End Tenancy on November 26, 2010. I find that the effective date of the end of the tenancy is January 31, 2011. Further to the provisions of Section 55(1) of the Act, I hereby provide the Landlord with an Order of Possession **effective 1:00 p.m., January 31, 2011.**

Conclusion

The Tenant's application is dismissed without leave to re-apply.

I hereby provide the Landlord an Order of Possession effective 1:00 p.m., **January 31, 2011.** This Order must be served on the Tenant and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

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 23, 2010.
