

DECISION

Dispute Codes CNL, FF

Introduction

This matter dealt with an application by the Tenants to cancel a 2 Month Notice to End Tenancy for Landlord's Use.

The Tenant said they served the Landlord with the Application and Notice of Hearing (the "hearing package") by personal delivery on December 30, 2010. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenants' 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 Tenant entitled to an order to cancel the Notice to End Tenancy?

Background and Evidence

This tenancy started on April 1, 2007 as a month to month tenancy. Rent is \$1,197.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$575.00 on April 1, 2007.

The Landlord said she served the Tenants with a 2 Month Notice to End Tenancy for Landlord's Use dated December 15, 2010. She served the Notice on December 15, 2010 by personal delivery to the Tenants. The Effective Vacancy date on the Notice is February 28, 2011. The Tenants are living in the unit and the Landlord requested an Order of Possession if the Tenant's application is unsuccessful.

The Landlord continued to say that she has put her present apartment up for sale and she intends to move into the rental unit as soon as it is vacant. She continued to say that she will do some repairs and upgrading to the kitchen, the bath room and she intends to replace the carpets. The Landlord said she will move in as soon as she can and she intends to sell her other apartment while it is vacant. The Landlord's agent and realtor testified that he spoke with the Landlord in the first week of December, 2010 about her selling her present home and moving into the rental unit. He said that he advised her this would be a good retirement plan. The Landlord continued to say that

this move is part of her retirement plan as she is within 2 to 3 years of retirement. As well she said her daughter lives in the unit upstairs from this unit and she is in discussion with her about continuing that tenancy.

The Tenants said they do not believe the Landlord is moving into the unit as part of her retirement plan, but she issued the Notices to End Tenancy as she is unable to deal with the tenant issues at the rental unit. The Tenant continued to say that they believe the Landlord has issued the same notice to the upstairs unit so that she can renovate the both units and stop the tenant issues. The Tenants did not provide any evidence that corroborated this testimony except that there were poor relations between the tenants in the building.

The Tenant continued to say that he had a number of issues about the tenancy including repairs and damages they have suffered, but he agreed to pursue them in a separate application.

The Tenant conclude that he does not think the Landlord is acting in good faith and he said he will monitor whether or not the Landlord lives in the unit as she said she will on the Notice to End Tenancy.

Analysis

The Residential Tenancy Policy Guidelines says there is a two part test to determine the requirements for “good faith”. First the landlord must truly intend to use the premises for the reason stated on the Notice and secondly the landlord’s motivation cannot be **primarily** to end the tenancy as retaliation on the tenant.

The Landlord testified that this move to the rental unit is part of her retirement plan and her agent/realtor testified that they had discussed this prior to the Notice to End Tenancy was issued. As well the Landlord’s agent said that he had advised her that it was a good choice to move into the rental unit and sell her present apartment.

Consequently, I find that the Landlord truly intends to move into the rental unit and this was her primary motivation when she issued the Notice to End Tenancy. As well, I find the Landlord has been acting in good faith and therefore the Tenant’s application to Cancel the 2 Month Notice to End Tenancy for Landlord’s Use dated December 30, 2010 is dismissed with leave to reapply.

Conclusion

The Tenant's application to cancel the Notice to End Tenancy is dismissed with leave to reapply.

An Order of Possession effective February 28, 2011, has been issued to the Landlord. A copy of the Order must be served on the Tenant in accordance with the Act: the Order of Possession and 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*.

Dated: January 19, 2011.

Residential Tenancy Branch