



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes CNL

Introduction

This hearing dealt with an application by the tenant for an order setting aside a notice to end this tenancy. Both parties participated in the conference call hearing and had opportunity to be heard.

Issue to be Decided

Should the notice to end tenancy be set aside?

Background and Evidence

The landlord testified that she served the tenant with a 2 month notice to end tenancy (the "Notice") by posting it on her door on January 1, 2011. The tenant testified that she did not receive the Notice until January 10 as she had been away from home until that date. The Notice alleges that the landlord or a close family member intends to occupy the rental unit.

The agent of the landlord who appeared at the hearing and who is named as the respondent in this proceeding testified that she is married to the son of the landlord/owner and that she and her husband intend to live in the rental unit. The agent testified that she currently lives in the same house as the landlord/owner and wishes to live separately from them. The agent testified that she will not be paying rent when she resides in the rental unit.

The tenant claimed that the agent already owns a home. The agent denied owning a home.

The tenant claimed that the Notice was issued in retaliation for her having reported to the City of Surrey that the rental unit was an illegal suite. The tenant stated that she was advised by the City that the landlord was permitted to rent only one of the three suites in the residential property.

Analysis

The landlord bears the burden of proving that she intends to use the rental unit for the purpose stated on the Notice. I find it more likely than not that the landlord's agent does indeed intend to reside in the unit. I accept that she wishes to move out of the home of her parents-in-law and I accept that she does not own another home in the absence of evidence to the contrary. Although the tenant claimed the landlord was attempting to retaliate against her for reporting the illegal suite to the City, I find it more likely that the landlord simply intends to comply with the directive of the City and allow his son and daughter-in-law to use the unit rent free.

Conclusion

For the above reasons I dismiss the tenant's claim for an order setting aside the Notice. 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 tenant must be served with the order of possession. Should the tenant 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.

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: February 01, 2011

Residential Tenancy Branch