



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPL, CNL, OLC, O

Introduction

This hearing was convened in response to applications filed by both the tenant and the landlord.

The tenant seeks to cancel a Notice to End Tenancy given for landlords, use an Order that the landlord comply with the Act and “other”.

The landlord seeks an Order of Possession.

Issue(s) to be Decided

Is either party entitled to the Orders sought?

Background and Evidence

The tenant says she was served with a 2 month Notice to End Tenancy on January 1, 2011 with an effective date of February 28, 2011. The tenant says the landlord must comply with the Act and give her 2 clear months notice. Further, the tenant says the landlord is intending to move either her brother or her sister into the rental unit and this is not a “close family member” as defined in section 49 of the Residential Tenancy Act. The tenant says that she is willing to vacate but that she needs more time to find a rental unit that will accept her pets.

The landlord says it is true that her brother and sister-in-law are going to be occupying the rental unit for extended periods of time. The landlord submitted evidence that the rental property is co-owned by the landlord and her father, this means that the rental unit will be occupied by a “child” of the owner and that this meets the “close family member” definition as set out in the Act. The landlord states that her father had a debilitating stroke 2 weeks before Christmas and is now unable to take care of himself. The landlord says her father was also responsible for looking after her mother which he can no longer do. The landlord says she has been responsible for looking after both her

mother and her father while she works full time and has a family of her own. The landlord says she is on the verge of burn-out. Therefore her brother and sister-in-law will be coming from Victoria to occupy the rental unit which is a cottage on the property and remain there to provide support to the landlord and their parents.

The landlord says she agrees she did not give the tenant the Notice to End Tenancy until January 1, 2011 but this is because she went to the rental unit to give the tenant the Notice in person but the tenant's car was not there and the landlord did not wish to simply post the notice on the door. The landlord is agreeable to the tenant staying until April 30, 2011.

The tenant says she would prefer to stay until the end of May 2011.

Analysis

I find that the landlord has proven cause to end this tenancy. She and her father own the property and the son of one of the owners is going to occupy the property. I therefore decline to cancel the Notice to End Tenancy.

With respect to service of the Notice, due to having been served on January 1, 2011 and the tenant requiring 2 clear months Notice, I find that this tenancy should rightfully end on April 30, 2011 and will issue an Order of Possession for that date.

Conclusion

The landlord is provided with a formal copy of an order of possession. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The landlord is provided with a formal copy of an order for the total monetary award as set out above. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Provincial 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*.