



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, CNC, CNL, FF

Introduction

This matter dealt with an application by the Tenant to cancel a Two Month Notice to End Tenancy dated October 31, 2011, to cancel a One Month Notice to End Tenancy for Cause dated November 28, 2011, to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 7, 2011 and to recover the filing fee for this proceeding.

Issue(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?

Background and Evidence

This tenancy started as a fixed term tenancy on February 1, 2010 which expired on July 1, 2010 and continued on a month-to-month basis thereafter. Rent is \$575.00 per month payable in advance on the 1st calendar day of each month plus one-third of the utilities for the rental property. The rental unit is a one bedroom suite in the lower part of a house. The upper level was rented to other tenants until December 15, 2011. On December 15, 2011, the Agent for the Landlord, his spouse and his son purchased the rental property.

The Parties agree that the Tenant was served in person by the Landlord's agent on October 31, 2011 with a letter that said (in part), "This notice is to end your tenancy at the above address. I am hereby giving you two months notice to move out of the rental unit at the above address. The reason for the notice is that the unit will be occupied by our son upon completion of the sale of the house." On November 20, 2011 the Tenant gave the Landlord's agent a letter that advised him that the 2 Month Notice was invalid, and that he should serve her with an approved form of the two month Notice. The Tenant also advised the Landlord that when he gave her the 2 Month Notice, he would also be required to pay her compensation equivalent to one month's rent.

The Parties agree that on November 28, 2011, the Landlord instead served the Tenant with a One Month Notice to End Tenancy for Cause dated November 28, 2011 which alleged that the Tenant had allowed an unreasonable number of occupants to reside in the rental unit. The Landlord's agent said the Tenant's daughter and infant child moved into the rental unit sometime prior to October 2011. The Landlord's agent said he

offered the 3 bedroom upper suite to the Tenant however she declined his offer. The Landlord's agent said he also suggested that the Tenant look at other basement suites being rented by his friends however the tenant declined to do so. The Tenant claims that her daughter stays in the rental unit only 3 nights per week.

On December 7, 2011, the Landlord's agent served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 7, 2011. The Tenant admitted that she did not pay rent for December 2011 as it is her position that she is entitled to withhold her last month's rent pursuant to the 2 Month Notice (which she also sought to cancel).

Analysis

Section 63(2) of the Act says that "if the parties settle their dispute during dispute resolution proceedings, the director may record the settlement in the form of a decision or Order. At the conclusion of the hearing, the Parties agreed to settle this matter on the following terms:

1. The Landlord will receive an Order of Possession to take effect at 1:0 p.m. on December 31, 2011; and
2. This will be without prejudice to the Landlord's right to make a claim for unpaid rent for December 2011.

Although I make no findings on the merits of the Tenant's application to cancel the Notices to End Tenancy, there was a great deal of confusion at the hearing as to whether the Tenant was seeking to enforce the 2 Month Notice or to cancel it. Consequently, I find that it would not be appropriate to order that the Landlord bear the cost of the filing fee for this proceeding and the Tenant's application to recover the filing fee is accordingly dismissed without leave to reapply.

Conclusion

An Order of Possession to take effect at 1:00 p.m. on December 31, 2011 has been issued to the Landlord pursuant to s. 55(2)(d) of the Act. A copy of the Order must be served on the Tenant 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: December 22, 2011.

Residential Tenancy Branch