



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNQ, CNL

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property pursuant to section 49; and
- cancellation of the landlord's 2 Month Notice to End Tenancy Because the Tenant Does not Qualify for Subsidized Rental Unit (the 2 Month Notice) pursuant to section 49.1.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to discuss their dispute with one another. The tenant confirmed that she received the landlord's 2 Month Notice posted by the landlord on her door on February 29, 2012. In accordance with section 90 of the *Act*, I find that the 2 Month Notice was deemed served to the tenant on March 5, 2012, the fifth day after its posting. The landlord confirmed that the tenant handed him a copy of her dispute resolution hearing package on March 12, 2012. I am satisfied that both of these documents were served to one another in accordance with the *Act*.

At the hearing, it became apparent that the landlord had only served the tenant with the 2 Month Notice Because the Tenant Does not Qualify for Subsidized Rental Unit. As the landlord did not serve the tenant with a 2 Month Notice to End Tenancy for Landlord's Use of Property, the tenant's application to cancel this Notice is withdrawn. At the hearing, the landlord requested an end to this tenancy if the tenant's application were dismissed. He also requested an Order of Possession.

Issues(s) to be Decided

Should the landlord's 2 Month Notice be cancelled? If not, should this tenancy end and should the landlord be issued an Order of Possession?

Background and Evidence

This periodic tenancy commenced on January 1, 2005. Monthly rent as of November 1, 2011 was set at \$510.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$630.00 security deposit paid on January 1, 2005.

The landlord issued the 2 Month Notice because he maintained that the tenant has been living in this subsidized 3-bedroom rental unit by herself since at least September 2011. At present, he maintained she qualified only for a subsidized 1-bedroom rental unit. The tenant provided written and oral evidence that she recently received a court decision returning her youngest daughter, a 10-year old, to her custody on or before July 1, 2012, after her completion of her school year. The landlord gave undisputed oral testimony that the tenant's older daughter has not been living with the tenant since at least September 2011. The tenant did not dispute the landlord's claim that she is currently over-housed in a 3-bedroom rental unit.

Analysis

Pursuant to section 63 of the *Act*, the dispute resolution officer may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing, the parties engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

At the hearing, both parties agreed to settle their dispute under the following terms:

1. Both parties agreed that this tenancy will end by 1:00 p.m. on May 31, 2012, by which time the tenant agreed that she will have vacated the rental premises.
2. Both parties agreed that this settlement constituted a final and binding resolution of all issues in dispute between them arising out of this tenancy at this time.

Conclusion

To give effect to the settlement reached between the parties and as discussed at the hearing, I issue the attached Order of Possession to be used by the landlord if the tenant does not vacate the rental premises in accordance with their agreement. 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.

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: March 29, 2012

Residential Tenancy Branch