



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

CNL, MNDC; FF

Introduction

This Hearing dealt with the Tenant's application to cancel a *2 Month Notice to End Tenancy for Landlord's Use of Property* (the Notice); for compensation under the Act, regulation and tenancy agreement; and to recover the cost of the filing fee from the Landlord.

The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

It was determined that on December 4, 2013, the Tenant mailed the Notice of Hearing documents to the Landlord, by registered mail, to her address in Alberta. The Tenant provided the tracking numbers. It was also determined the parties served each other with their documentary evidence by registered mail. Tracking numbers were provided for both of the evidence packages.

Issues to be Decided

- Should the Notice issued November 13, 2013 be cancelled?
- Should the Tenant be awarded compensation for damage or loss?

Background and Evidence

The parties attended a teleconference on November 13, 2013 (the "Previous Hearing"). The Previous Hearing was convened to consider the Tenant's application to cancel a notice to end tenancy for cause; to obtain an Order of Possession of the rental unit; for compensation for damage or loss under the Act, regulation or tenancy agreement; to

suspend or set conditions on the Landlord's right to enter the rental unit; and to recover the cost of the filing fee from the Landlord. During the conclusion of the Previous Hearing, the Landlord exited the conference call. The arbitrator gave the Landlord 20 minutes to sign back into the conference, but she did not do so. The arbitrator concluded the conference and provided the following decision/orders with respect to the Previous Hearing on November 13, 2013:

1. The Tenant's application for an Order of Possession and compensation was dismissed with leave to reapply.
2. The arbitrator recorded a mutual agreement that the Landlord would post any documents she wished to serve the Tenant on the external side door which leads to the stairwells of the house.
3. The notice to end tenancy for cause was cancelled.
4. The Tenant was entitled to recover the cost of the filing fee, which could be deducted from future rent due to the Landlord.

The rental property is a house containing an upper and a lower suite. At the beginning of the tenancy, the Landlord lived in the upper suite. Rent is \$600.00 per month, due on the first day of the month, and includes utilities, cable and use of the garage. The rental unit was provided to the Tenant fully furnished.

The Tenant acknowledged receiving the Notice on November 13, 2013.

The Landlord gave the following testimony:

The Landlord has alleged the following reason on the Notice for ending the tenancy:

The rental unit will be occupied by the landlord or the landlord's spouse or close family member (father, mother or child) of the landlord or the landlord's spouse.

The Landlord testified that she moved to Alberta in October, 2013, to be near her family because of her ill health. She stated that she has decided to move back into the rental property. The Landlord testified that after she moved out of the upper suite, she rented the upper suite to a property manager, but the property manager is incapable of doing the gardening. The Landlord stated that she wants to move back into the rental property so that she can do the gardening. She stated that she wants to move into the lower suite because it is more conveniently located for her purposes.

The Landlord stated that the Tenant is verbally abusive to her.

The Landlord testified that her family wanted her to move to Alberta, but now she has found a doctor in the town where the rental property is located; so her family is moving her back to the rental property.

The Landlord stated that she had to give her current landlords due notice and then she would be moving back.

The Tenant gave the following testimony:

The Tenant stated that she believes the Landlord gave her the Notice in retaliation for the decision that was made at the Previous Hearing. The Tenant stated that she was served with the Notice within moments of the end of the Previous Hearing. The Tenant does not believe the Landlord has any intention of moving into the rental unit.

The Tenant testified that she was surprised when the Landlord told her at the end of August, 2013, that she would be moving to Alberta in October, 2013. She stated that the Landlord told her that she was moving into a condominium that her daughter and husband had just purchased.

The Tenant stated that the Landlord told her that she would have to pay a rent increase of \$155.00 a month. The Tenant testified that she told the Landlord she could not afford \$755.00 a month, and the Landlord told her to find someone to share the house with. The Tenant testified that the Landlord told the new upstairs occupant that she could have the Tenant's entertainment centre.

The Tenant testified that she was on the verge of a breakdown and decided to move out of the rental unit. She stated that furnished rental units in her price range were scarce, but she found a place for the beginning of January, 2014. Her prospective landlord agreed to enter a tenancy agreement but the day before she was to meet with the prospective landlord, the Tenant was asked for a reference from her current Landlord. The Tenant stated that she gave the prospective landlord the name of the new occupant (the Landlord's new property manager). The Landlord's property manager referred the prospective landlord to the Landlord, who gave the prospective landlord a bad reference. The Tenant stated that she lives in a small community and that she has now been blacklisted.

Analysis

The Act allows a landlord to end a tenancy if the landlord intends in good faith to move into the rental unit. Residential Tenancy Policy Guideline 2 defines "good faith" as "an abstract and intangible quality that encompasses an honest intention, the absence of

malice and no ulterior motive". In other words, the Landlord must honestly intend to use the rental unit for the purpose stated on the Notice. If a tenant calls into question a landlord's "good faith" intent, the landlord must also establish that she does not have another purpose for ending the tenancy.

In this case, the Landlord provided no documentary evidence that she is moving back into the rental property (for example, a copy of her notice to end tenancy with her current landlord). In addition, I find it improbable that the Landlord would go to the expense of moving to another province due to ill health, and then move back less than two months later in order to provide gardening services at the rental property. The timing of the issuance of the Notice is also suspect, considering that it was issued within a short time after another notice to the end the tenancy was cancelled.

Therefore, for the reasons given above, I find on the balance of probabilities that the Landlord had an ulterior motive for ending the tenancy. Accordingly, I grant the Tenant's application to cancel the Notice. The effect of this decision is that the tenancy shall continue until it is ended in accordance with the provisions of the Act.

It is important to note that during the Hearing the Landlord asked if she could end the tenancy if the rental property was sold. I refer the Landlord to Sections 44 to 50 of the Act, which provides for the ways that tenancies end in British Columbia. The Landlord is also cautioned that repeated invalid notices to end the tenancy could be construed as harassment.

The Hearing took 1 ½ hours and there was insufficient time to consider the Tenant's application for compensation. I heard no testimony with respect to the Tenant's claim for compensation and therefore, I dismiss this portion of the Tenant's application with leave to reapply.

The Tenant has been successful in cancelling the Notice and therefore I find that she is entitled to recover the cost of the \$50.00 filing fee from the Landlord.

Pursuant to the provisions of Section 72 of the Act, the Tenant may deduct \$50.00 from future rent.

Conclusion

The Notice to End Tenancy issued November 13, 2013 is **cancelled**.

The Tenant's application for compensation is **dismissed with leave to reapply**.

The Tenant may deduct **\$50.00** from future rent due to the Landlord, in recovery of the cost of the filing fee.

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 25, 2014

Residential Tenancy Branch

