



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, LAT, RR

Introduction

This hearing dealt with the tenant's application for dispute resolution, seeking to cancel a notice to end tenancy issued by the landlord for the landlord's use of the property. The tenant also applied for an order authorizing her to change locks and pay a reduced rent.

Both parties appeared, gave 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.

Issues to be Decided

Has the landlord validly issued the notice to end tenancy and does the landlord intend, in good faith, to move into the rental unit? Is the tenant entitled to the other remedies that she has applied for?

Background and Evidence

The rental unit consists of a two bedroom suite in the basement of the landlord's home. The landlord lives upstairs. Each bedroom is rented out separately and the two tenants of the basement have their own washroom and share a kitchen. Laundry machines are located in the kitchen and are used by all occupants of the home including the landlord.

The tenancy started on September 01, 2013. The tenant pays \$500.00 per month. On January 24, 2014, the landlord served the tenant with a two month notice to end tenancy for landlord's use of property to be effective on March 31, 2014. The reason the landlord gave the notice to the tenant is described as, the rental unit will be occupied by the landlord or the landlord's spouse or a close family member of the landlord or the landlord's spouse. The tenant disputed the notice in a timely manner.

The landlord stated that the upstairs of the home has three bedrooms and is occupied by the landlords, their daughter and the landlords' mother. The landlord's daughter is in high school and teaches piano after school.

The piano lessons are taught four days a week from 3:30pm to 8:30pm. The landlord stated that the landlords' daughter currently teaches the lessons out of her own bedroom and wishes to move her lessons to a larger room.

The landlords stated that their mother would like to live on the lower level so that she does not have to climb stairs. The landlords stated that they served the tenant with the notice, to allow the landlords' mother to occupy the bedroom in the basement and to allow their daughter to conduct her piano lessons out of the third bedroom upstairs.

The tenant stated that she believed that the notice was served in bad faith because it was served shortly after the parties had an argument over the use of laundry. The tenant also stated that the landlords' mother is not physically challenged and goes for walks in the neighbourhood and has also travelled abroad. The tenant testified that the landlords' mother is capable of walking up stairs.

The tenant stated that the landlord enters her rental unit without permission and referred to two occasions that this occurred. The landlord stated that the first time, she smelt burning and knocked on the tenant's door. The tenant was asleep inside and did not open the door. The landlord entered to check out the safety of the room.

The second occasion, the tenant stated that at 6:30am one morning, she visited her washroom to find the male landlord in the area with a flashlight. The tenant confirmed that the door to her washroom was accessed from the common area. The landlord stated that he was checking the hot water tank because there was no hot water in the home that morning. Other than these two times, the tenant stated she was not sure if the landlord entered her bedroom in her absence.

The tenant also stated that after a few complaints the tiles in the bathroom were repaired but the stove was not. The tenant stated that only two burners are functional. The landlord agreed to check out the stove and carry out repairs as needed. The tenant also stated that the refrigerator is defrosted by the landlord every month and her food is moved around. The landlord agreed that the refrigerator needs to be defrosted regularly but stated that the tenant's food is placed in another refrigerator and returned after the defrosting is complete.

Analysis

When the tenant alleges bad faith on the part of the landlord, the landlord has an onus to prove they are acting in good faith. Based on the sworn testimony of the landlord, I find that the landlord's intends in good faith to occupy the rental unit for their personal use.

The tenant argued that the landlords had failed to act in good faith and in the absence of any evidence to support this allegation; I find the landlords have met the good faith requirement of the legislation and intend to allow their mother to move into the rental unit. Therefore, I find that the Notice to End Tenancy must be upheld and accordingly I dismiss the tenant's application.

At 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.

Based on the testimony of both parties, I find that the tenant has not proven that the landlord enters her private space without permission and therefore I dismiss the tenant's application for authorization to change the locks.

The landlord has already repaired the tile in the bathroom and has agreed to repair the stove. I do not find that the tenant is entitled to a rent reduction and therefore dismiss this portion of her application.

Conclusion

The Notice to End Tenancy is upheld and I grant the Landlord an order of possession effective on or before **1:00 p.m. on March 31, 2014**. The remainder of the tenant's application is dismissed.

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 28, 2014

Residential Tenancy Branch

