



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Tenants' application: CNL; FF; O

Landlord's application: OPL; FF

Introduction

This Hearing was scheduled to determine cross applications. The Tenants seek to cancel a *2 Month Notice to End Tenancy for Landlord's Use of Rental Property* issued February 22, 2014 (the "Notice"); to recover the cost of the filing fee from the Landlord; and for "other" orders.

The Landlord seeks an Order of Possession; and to recover the cost of the filing fee from the Tenants.

At the start of the Hearing I introduced myself to the participants, explained the hearing process and provided the parties an opportunity to ask questions about the hearing process. The parties were provided the opportunity to submit documentary evidence prior to the hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing.

The Tenant MS testified that he gave the Landlord the Notice of Hearing documents on April 10, 2014. The Landlord acknowledged service in this manner, and noted that the Tenant did not serve the Notice of Hearing documents within the required three days. The Landlord's agent testified that he provided the Tenant with the Landlord's Notice of Hearing documents by hand on April 21, 2014.

I note that both parties were outside the three day time limit allowed under the Act for serving the other party with Notice of the Hearing. However, neither party requested an adjournment in order to prepare for the Hearing.

It was determined that the Tenants received the Notice to End Tenancy on February 27, 2014.

I have considered all testimony and documentary evidence provided.

Preliminary Matter

The Tenants' Application for Dispute Resolution indicates that they are seeking "other" relief; however, they did not provide details in their Application with respect to what other relief they were seeking. When a party seeks "other" relief, the Application for Dispute Resolution requires the applicant to provide details in the "Details of Dispute Resolution" section. No details were provided. Therefore this portion of the Tenants' application is dismissed.

Issue(s) to be Decided

- (1) Should the Notice be cancelled or upheld?

Background and Evidence

This tenancy began on August 1, 2013, for a fixed term of 5 months. At the end of the fixed term, the tenancy continued on a month-to-month basis. Monthly rent is \$1,300.00, due on the first day of each month. The Tenants paid a security deposit in the amount of \$650.00 and a pet damage deposit in the amount of \$325.00.

The Landlord wishes to end the tenancy because she intends to move into the rental unit. The Landlord has three foster children with special needs, who she intends to adopt and who require their own bedrooms. Currently, the Landlord has given up her bedroom for one of the foster-children. The rental unit has more bedrooms than her current home and is therefore more suitable accommodation for the Landlord. The Landlord's current home is presently up for sale.

The Landlord provided confirmation from a social worker with respect to the foster children. Enclosed in the social worker's letter is the following recommendation:

"Given the level of special needs each of the three children being placed into your home as of March 14th, 2014 contend with I suggest the living arrangements you currently have may not meet their specific needs. I highly encourage and recommend that you obtain living arrangements that allow for each special needs teenager to have their own private bedroom and space. For the successful long term permanent placement that is being worked on through Adoptions I strongly suggest that should you have access to alternate residential living arrangements that can meet the above mentioned need you utilize this for the long term benefit of the three special needs teenagers being placed in your care." [reproduced as written]

The Tenants do not dispute that the Landlord intends to move into the rental unit. The Tenants have four children and MS submitted that the Tenants are trying to find suitable accommodation for six people. He stated that it is very difficult to find such accommodation and that the Landlord is further hindering them by not responding to potential landlords' requests for references. MS submitted that the Landlord may be inconvenienced by sleeping on the couch, but that his family may be on the street if they are evicted.

The Landlord stated that she has not been approached for a reference by any other potential landlords.

Analysis

In an application such as this, where the Landlord has issued a Notice to End Tenancy for Landlord's Use of Property, the burden is on the Landlord to establish that she truly intends to do what he indicated on the Notice to End Tenancy.

Based on the documentary evidence provided by the Landlord, I am satisfied that she and her foster children are intending to move into the rental unit. I am also satisfied that this is her primary motive for ending the tenancy. Therefore, the Tenant's application to cancel the Notice to End Tenancy issued February 27, 2014, is **dismissed**.

I find that the Landlord is entitled to an Order of Possession effective 2 days after service of the Order upon the Tenants. However, the Landlord's agent stated that the Landlord would give the Tenants an extra month to find alternative accommodation, and that they wouldn't have to pay rent for the month of May, 2014, in consideration of their compensation pursuant to the Act. The Landlord stated that this would be on condition that the Tenants immediately boarded their dog elsewhere. The Landlord stated that the Tenants' dog bit another dog and has bitten her husband.

The Tenant asked for 48 hours to find a boarding facility for his dog, to which the Landlord agreed.

The Landlord has been successful in her application and therefore I find that she is entitled to recover the cost of the filing fee from the Tenants. Pursuant to the provisions of Section 72 of the Act, the Landlord may deduct \$50.00 from the security deposit in satisfaction of this portion of her claim.

The remainder of the security deposit and the pet damage deposit must be administered in accordance with the provisions of the Act.

Conclusion

The Tenants' application is dismissed in its entirety.

The Landlord is provided an Order of Possession effective **2 days after service of the Order upon the Tenants. In the event that the Tenants' dog has vacated the rental unit within 48 hours of receipt of this Decision, the Landlord will not serve this Order upon the Tenants until May 29, 2014.** This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The Landlord may retain **\$50.00** of the security deposit in satisfaction of recovery of the filing fee. The remainder of the security deposit and the pet damage deposit must be applied in accordance with the provisions of the Act.

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: May 02, 2014

Residential Tenancy Branch

