



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Clifford Enterprises Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MNDC, OLC, FF

Introduction

This is an application filed by the tenant to cancel a notice to end tenancy issued for cause, a monetary order for money owed or compensation for damage or loss, an order for the landlord to comply with the Act, Regulations or tenancy agreement and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. As both parties have attended and have confirmed receipt of the notice of hearing package and the submitted documentary evidence, I am satisfied that both parties have been properly served.

It was clarified with the landlord during the hearing that he wished to end the tenancy and to obtain an order of possession.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the notice to end tenancy?

Is the tenant entitled to a monetary order?

Background and Evidence

This tenancy began on February 1, 2009 on a month to month basis as shown by the submitted copy of the signed tenancy agreement. The monthly rent is \$750.00 payable on the 1st of each month and a security deposit of \$375.00 was paid.

Both parties confirmed that the landlord served the tenant with a 1 month notice to end tenancy issued for cause dated May 1, 2014 with a stated effective end of tenancy date of May 31, 2014. The notice displays that one reason for cause was selected.

-Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord states that it was discovered that the tenant was operation a daycare business which is contrary to section #19 of the terms of the tenancy. Section 19 states, "Use of Premises, The tenant(s) and the tenant(s)'s guests shall use the premises for PRIVATE RESIDENTIAL PURPOSES ONLY and not for any illegal, unlawful, commercial or business purposes..." The landlord also states that upon discovering the business, the tenant was advised in writing by letter, dated April 24, 2014 that this was a breach and that, "We would like to see that the operation of the daycare service terminated by April 30, 2014 and you must ask your customers to return all the keys to you/us immediately upon receipt of this letter." The landlord states that it was noticed by the resident manager that customers had keys to the rental property which is a breach of security. The tenant disputes this claim stating that the landlord was aware of the tenant's business for atleast 2 years, but chose to do nothing. The tenant states that the previous manager, E.D. expressly authorized the tenant to look after up to 2 children in the suite. The landlord has called, E.D. as witness, who is no longer an employee. The witness, E.D. states in his direct testimony that he was only aware of the tenant babysitting 1 child and that she had previously asked for permission to run a daycare. The witness, E.D. stated that he did not allow the tenant to have a daycare as he did not have any authorization to do so. The witness, E.D. also states that prior to the hearing, he was contacted by the tenant to ask him for his testimony that he did allow the tenant permission to run a daycare out of the rental unit. The tenant dispute this stating that although they have no evidence that the landlord allowed the tenant to run a daycare, it is suggested that the rental property is small and that the landlord had to have been aware of the tenant's business. The landlord disputes this stating that upon becoming aware of the business that the letter warning the tenant to terminate the business was issued. The tenant states that being served with the warning letter on April 24 or 25th to comply with the termination of the business is not reasonable and that 1 to 2 months should have been allowed.

The tenant also seeks a monetary claim of \$2,000.00 for the loss of quiet enjoyment and harassment. The tenant states that the landlord's actions amount to an "unreasonable disturbance" causing stress to the tenant and her family. The tenant also states that the landlord has engaged in continued harassment and that there is another tenant who is also running a child care operation who is not being evicted and that this shows that the landlord is unfairly singling out the tenant. The landlord disputes this stating that no harassment has occurred and that the landlord's actions are reasonable to notify the tenant of the breach of the terms of the tenancy agreement.

Analysis

I accept the evidence of both parties and find on a balance of probabilities that I prefer the evidence of the landlord over that of the tenant. Although compelling, the tenant's evidence is without corroboration especially due to the tenant's claims that the former building manager, E.D. gave express permission to run a daycare business. For which the witness, E.D. adamantly disputed. On this basis, I find that the tenant has failed in her claim for an order to cancel the notice to end tenancy issued for cause. The landlord has established grounds for the notice to end tenancy dated May 1, 2014. The notice is upheld. The landlord is granted an order of possession. 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.

As for the tenant's monetary claim, I find that the tenant has failed to provide sufficient evidence to satisfy me that the landlord's actions in serving the tenant with a notice to end tenancy as well as the notice's served to the tenant regarding a breach of a material term of the tenancy as harassment which would cause a loss of quiet enjoyment. This portion of the tenant's claim is dismissed.

Conclusion

The tenant's application is dismissed.

The landlord is granted an order of possession.

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: July 3, 2014

Residential Tenancy Branch

