



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, RP, OLC, FF

Introduction

This hearing dealt with an application by the tenant seeking to have a Two Month Notice to End Tenancy for Landlords Use of Property set aside, an order to have repairs conducted and an order to have the landlord comply with the Act. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

Issues to be Decided

Are the tenants entitled to any of the above under the Act, regulation or tenancy agreement?

Background and Evidence

The tenancy began on or about September 1, 2012. Rent in the amount of \$2200.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$1000.00 and a pet deposit of \$1000.00.

The landlord gave the following testimony:

The landlord stated that she moved out of this condo two years ago due to it being a leaky condo and that she rented a small house. The landlord stated that extensive repairs were required to the building. The landlord stated that she did not feel a construction zone was an appropriate place for her to raise her son at that time. The

landlord originally wished to have the unit vacant for renovations but upon further consideration she decided to move back into the unit. The landlord stated that she has suffered extensive financial hardship because of the leaky condo problem that has required her to re-mortgage it. The landlord stated that it made financial sense for her to move back in rather than pay rent somewhere else. The landlord issued a notice to the tenants on June 15, 2014 originally but stated during the hearing that she no longer wished to pursue that notice. The landlord issued a subsequent notice on June 27, 2014 with an effective date of August 31, 2014. The landlord requested an order of possession.

The tenants gave the following testimony:

The tenants stated that the landlords' true reason for issuing the notice is so that she can rent the unit for as much as \$3500.00. The tenants stated that they feel the landlord is not being truthful and that she will not be moving in. The tenants stated that if they had agreed to the landlords demands for higher rent she most likely would have not issued these notices. The tenants wish to remain in the suite. The tenants stated that they have paid all their rent to date.

Analysis

When a landlord issues a notice under Section 49 they bear the responsibility in proving that they intend to use the property as stated on the notice. If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive for ending the tenancy. I found the landlord to be clear, concise and consistent in giving her testimony. She stated numerous times that it was a financial decision as well as a lifestyle decision to return to her condo. I am satisfied that that the landlord has issued this notice in good faith. Based on the above facts I find that the landlord is entitled to 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.

The notice dated June 27, 2014 with an effective date of August 31, 2014 is hereby confirmed. It is of full effect and force. However, due to the date at which the hearing was conducted and the time involved in the administration of this decision, it would be unreasonable and inappropriate to end the tenancy any earlier than 1:00 p.m. on September 30, 2014. As both parties have confirmed, the tenants have yet to receive one month's compensation as required by the notice served by the landlord. The tenants are not obligated to pay the September rent due. If the tenants have already done so, the landlord is to return that rent immediately upon receipt of this decision.

As I have found that the tenancy is to be terminated, I need not address the balance of the tenants' application and I therefore dismiss it in its entirety.

Conclusion

The landlord is granted an order of possession for 1:00 p.m. on September 30, 2014.

The tenants application is dismissed in its entirety.

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: September 02, 2014

Residential Tenancy Branch

