



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To cancel a notice to end tenancy for landlord's use of the property pursuant to section 49;
- b) An Order that the landlord comply with the Act; and
- c) To recover the filing fee for this application.

Service:

The Notice to End Tenancy is dated June 30, 2014 to be effective August 31, 2014 and was served by posting it on the tenant's door which is deemed to be received the third day after). The effective date on the Notice is automatically corrected to September 30, 2014 pursuant to section 53 of the *Residential Tenancy Act* as a Notice to End Tenancy for landlord's use of the property must give a full two months' notice and end the tenancy on the day before the day in the month that rent is payable under the tenancy agreement according to section 45 (1) (b). The landlord confirmed receipt of the tenant /applicant's Application for Dispute Resolution which is dated July 8, 2014. I find the documents were legally served for the purposes of this hearing.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that they need in good faith to end the tenancy in order to have the property for their own use or is the tenant entitled to any relief? Is the landlord entitled to an Order of Possession if the tenant is unsuccessful in the application?

Background and Evidence

The tenant/applicant did not attend the hearing. After waiting 10 minutes, the hearing commenced in her absence. The landlord was given opportunity to be heard, to provide evidence and to make submissions. The landlord said the tenancy commenced some years ago before they bought the property, it is a month to month tenancy, rent is \$840 a month and a security deposit of \$300 was paid a few years ago. The landlord served a Notice to End Tenancy because they intend to occupy the unit themselves. The

landlords explained that they are the owners of the property but live on Vancouver Island, they have an elderly relative who has increasing health issues and need to have this suite to occupy on their very frequent trips to the mainland.

Included with the evidence is a copy of the Notice to End Tenancy, a tax bill showing them as owners and a letter from the person whom the tenant listed as the landlord stating the owner is the landlord who intends to take the suite for his own use.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

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Analysis:

As discussed with the parties in the hearing, the onus is on the landlord to prove on a balance of probabilities that they have good cause to evict the tenant. I find the evidence of the landlord credible that they intend to occupy the unit themselves when they come frequently to the mainland. Another tenant submitted a letter stating this also. The landlord requested an Order of Possession if the tenant is not successful.

Although the tenant contended the Notice was not in good faith because there had been an appraiser coming through the home, I find she did not attend to support her Application and provided no other proof of the landlord's bad faith. Therefore, I dismiss her Application. I find the tenancy is terminated on September 30, 2014 as automatically corrected under section 53 of the Act.

Conclusion:

The Application of the Tenant to set aside the Notice to End Tenancy is dismissed. The tenancy is at an end on September 30, 2014 (as corrected). Pursuant to the landlord's request and section 55 of the Act, an Order of Possession is issued to the landlord effective September 30, 2014.

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 10, 2014

Residential Tenancy Branch

