



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNL OPL

Introduction:

This was an application by the tenant to cancel a Notice to End the Tenancy for owner's use of the property pursuant to section 49 of the *Residential Tenancy Act* (the Act) dated June 17, 2014. Both parties were present at the hearing and agreed the tenant had been served the Notice to End Tenancy and the landlord admitted service of the application for dispute resolution.

Issues: Is the tenant entitled to any relief?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to provide evidence and to make submissions. It is undisputed that the tenancy began on January 1, 2014 on a fixed term for three months to March 31, 2014. The current rent is \$800 and the tenant paid a security deposit of \$400 and a pet damage deposit of \$400.

The landlord served the notice to end tenancy as her son, his wife and child need to occupy the premises. She and her son both gave sworn testimony that his wife had lost her job and needed to move into the cottage so they could get grandparent support. The tenant requested that the Notice be cancelled for she said she had a fixed term lease that does not expire until March 31, 2015. She said the landlord had changed the second lease after she had first presented it. The landlord denies this.

The tenant said the landlord refused her copies of the two leases so she was unable to provide the second fixed term lease as evidence. The landlord said she had left copies of the leases with the tenant to sign but she never signed either or got them back to her. She said that the leases were written as provided in evidence, the first as a three month fixed term and the second as a month to month lease. She requests an Order of Possession as soon as possible for she said the extra three people in her home make it extremely uncomfortable. She testified that the tenant had paid rent for August and September 2014 and I advised her that the tenant is entitled to one month rent free pursuant to section 51 of the Act whether or not the landlord is upset with her behaviour. In an amendment to her Application, the tenant claimed \$780 but did not specify on the Application or in her evidence why she claimed this amount or what it was for. In evidence are two leases, emails, the Notice to End Tenancy and some statements.

Analysis:

The Notice to End a Residential Tenancy is based on landlord's use of the property pursuant to section 49. The *Residential Tenancy Act* permits a tenant to apply to have the Notice set aside where the tenant disputes it. I find the landlord's evidence credible as it is well supported by the submitted documents and the evidence of her son who will be occupying the cottage. Although the tenant vigorously contended that she had a fixed term lease expiring in March 2015 and the tenancy could not end until March 2015 pursuant to section 49(2)(c), I find insufficient evidence to support her allegations. The two copies of the leases state the first is a fixed term for 3 months to March 31, 2014 and the second is a month to month. While she said that the landlord refused to give copies of the leases, I find the emails dated May 20, 2014 confirm that the landlord emailed her a copy signed by the landlord for an application the tenant was making in Vancouver. While the tenant contended that this was not the original copy, I find insufficient evidence to support this allegation.

I dismiss this application to cancel the Notice to End the Tenancy. Section 55(1)(a) provides that the arbitrator must grant an order of possession of the rental unit if the landlord makes an oral request for an order of possession at a hearing where an arbitrator has dismissed the tenant's application pursuant to section 49. The landlord made this request at the hearing and that it be as soon as possible. I grant the landlord an Order of Possession effective two days from service.

In respect to the tenant's monetary claim, I find insufficient evidence to support her claim for compensation of \$780. She has not vacated the premises and has paid rent for August and September. The landlord must reimburse her for one month's free rent pursuant to section 51 of the Act and treat her security deposit and pet damage deposits according to section 38 of the Act; the landlord has indicated she will do so. I dismiss this part of the tenant's claim and I give her leave to reapply for any monetary compensation to which she can show entitlement.

Conclusion:

I dismiss the tenant's application but give her leave to reapply for any monetary claim she may have. I grant the landlord an Order of Possession effective two days from service. The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement. No filing fee was involved.

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 03, 2014

Residential Tenancy Branch

