



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ARGENTIS PROPERTIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, OLC, FF

Introduction

This hearing was convened by way of conference call in response to the tenant's application for an Order to cancel a Two Month Notice to End Tenancy for landlord's use of the property; For an Order for the landlord to comply with the *Residential Tenancy Act (Act)*, regulation, or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the tenant entitled to an Order to cancel the Two Month Notice to End Tenancy?
- Is the tenant entitled to an Order for the landlord to comply with the *Act*?

Background and Evidence

The parties agreed that this month to month tenancy started on December 04, 2012 although the tenant actually moved into the unit 23 years ago. Rent for this unit is now \$857.00 per month due on the 1st of each month.

The landlord testified that the tenant was served a Two Month Notice to End Tenancy for Landlords Use of the Property (the Notice) by putting it in the tenant's mail slot on May 22, 2015. The Notice has been provided in documentary evidence by both parties. The Notice indicates that the rental unit will be occupied by the landlord, the landlord's spouse or a close family member of the landlord. The Notice also indicates that a family corporation owns the rental unit and it will be occupied by an individual who owns, or who's close family members own, all the voting shares. There Notice has an effective date of July 31, 2015.

The landlord testified that his son and his partner wish to occupy the rental unit. At present they are renting another unit with some other tenants and as the other tenants have given notice to vacate the landlord's son and his partner cannot maintain their tenancy on their own. The landlord's son and his partner have given notice to end their tenancy effective August 31, 2015. The landlord testified that this will give the landlord time to do a renovation on this unit before his son moves in. A few years ago the landlord's son suffered a stroke and in addition to the renovation the landlord needs to install some medical equipment for his son's use.

The landlord testified that this is a family owed corporation and his son is a legitimate shareholder in the corporation. This unit was chosen due to its larger size and views. The landlord testified that he has had no notice from any of the other tenants living in the building of any vacancies coming up so this unit was the ideal choose for the landlord's son to live in with his partner. The landlord testified that they have followed the correct procedures in giving the tenant this Notice as required under the *Act* and all relevant information has been provided to the tenant.

The tenant testified that there is another unit across the hall which is slightly bigger than her unit and the tenant has heard it will be available from August 01, 2015 as the tenant has vacated and just has her belongings in the unit.

The tenant testified that if the landlord wants to just do a renovation in the tenant's unit she can accommodate this and is willing to pay a slightly higher rent to cover additional costs to renovate. The landlord's son could therefore live in the other unit across the hall.

The tenant testified that she has no matters to bring forth concerning a section of the *Act* that the landlord has not complied with.

The landlord testified that the unit across the hall is still occupied by a 92 year old lady who had been in hospital for a while and then came back to her unit. That tenant is in hospital again at the moment but the landlord has not had notice to vacate the unit from that tenant. The landlord agreed he had spoken to a family member of that tenant but although they are trying to find her somewhere to live the landlord has not received written notice. In any event even if that unit did become available the landlord has another son who would be interested in living in that unit.

The tenant testified that she is suffering from a serious illness and she is a senior who has resided in her unit for over 23 years. The landlord has other units he could use for his sons in the building.

The landlord argued that there are 19 units in the building but only a few of these are two bedroom units. The landlord testified that as the landlord they are able to choose any unit for their own use and someone has to receive the notice to end their tenancy. Both parties decline the opportunity to cross examine the other party.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I find that the tenant is not disputing the fact that the landlord's son will be occupying the rental unit; the tenant's arguments lay around the matter that the landlord's son could rent one of the other units as the tenant has resided in her unit for 23 years. The tenant has insufficient evidence to indicate that the other unit is available shortly before the tenant's notice is effective and the tenant has insufficient evidence to show that the landlord will not be using the property for its intended purpose as given on the Notice to End Tenancy. A landlord is entitled to exercise his right to give a Notice to End Tenancy for any of the units. While I accept that it is unfortunate for the tenant to have been the tenant to receive this Notice the fact remains that the landlord is entitled to issue this Notice.

I am satisfied with the evidence before me that the landlord does intend to use the rental unit for the reason given on the Notice. I find therefore, that the Notice under section 49 of the *Residential Tenancy Act (Act)* is upheld and the tenant's application to cancel the Notice is dismissed.

Section 55(1) of the *Act* states:

55 (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

(a) the landlord makes an oral request for an order of possession, and

(b) the director dismisses the tenant's application or upholds the landlord's notice.

Consequently I find as the Notice has been upheld and the tenant's application is dismissed, the landlord is entitled to orally request an Order of Possession at the hearing. As such I grant the landlord an Order of Possession pursuant to s. 55(1) of the *Act*.

Conclusion

The tenant's application is dismissed in its entirety without leave to reapply. The Two Month Notice to End Tenancy for the landlord's use of the property will remain in force and effect.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective on July 31, 2015. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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 16, 2015

Residential Tenancy Branch

