



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, RR, FF

Introduction

This matter dealt with an application by the Tenant to cancel a 2 Month Notice to End Tenancy for the Landlord's Use of the property, a rent reduction and to recover the filing fee for this proceeding.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the "hearing package") by registered mail on January 2, 2016. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Is the Tenant entitled to an order to cancel the Notice to End Tenancy?
2. Is the Tenant entitled to a rent reduction?

Background and Evidence

This tenancy started on May 31, 2014 as a verbal month to month tenancy. Rent is \$850.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$425.00 at the start of the tenancy.

The Landlord said he served the Tenant with a 2 Month Notice to End Tenancy for Landlord's Use of the Property dated December 20, 2015 by posting the Notice on the door of the Tenant's unit on December 20, 2015. The reason on the Notice to End Tenancy was for a close family member of the Landlord to moving into the rental unit. The Landlord said his wife's father and brother are moving into the rental unit on March 1, 2016. The Landlord said his brother in-law has health issues and his father in-law is going to live with him as a caregiver. The Landlord's wife confirmed the Landlord's testimony that her father and brother were moving into the rental unit March 1, 2016. The effective vacancy date on the Notice is March 1, 2016 and the Landlord requested to end the tenancy on that date. The Landlord said the Tenant is living in the unit and the Landlord requested an Order of Possession if the Tenant's application is unsuccessful.

The Tenant said that it is suspicious that the 2 Month Notice to End Tenancy was issued to her just after she complained to the Landlord about the Landlord make too much noise in the unit above her. The Tenant said she does not believe the Landlord's father in law is moving into the rental unit as he has a home in another city. The Tenant said she believes the Notice to End Tenancy was not issued in good faith and the Landlord wants to end the tenancy because of issues between the Tenant and the Landlord. The Tenant said she does not have any corroborative evidence that the Landlord's wife's father and brother are moving in because it is difficult to prove.

Further the Tenant said she is requesting a rent reduction because the Landlord restricted the use of the laundry. The Tenant said she has allergies and she cannot use a commercial laundry facility as the detergent affects her health. The Landlord said the laundry was not included in the verbal rental agreement and the rental unit was not advertised with laundry facilities. The Landlord said the Tenant was allowed to use the laundry as a gift from the Landlord as the laundry facilities are in the Landlord's part of the house.

As well the Tenant said she should be compensated for the loss of heat in her unit from October 13, 2015 to October 27, 2015. The Tenant said she provided a list of repairs to the Landlord on October 17, 2015 and a repair to the thermostat was included in that list. The Tenant said she wrote the Landlord again on October 23, 2015 saying the unit was cold and could the Landlord repair the thermostat. The Tenant said the heating issue was corrected on October 27, 2015.

The Landlord said he wants to end the tenancy so his father and brother in-laws can move into the rental unit.

The Tenant said in closing that she believes the Landlord is not acting in good faith but she is prepared to move on March 1, 2016.

Analysis

Section 49 (3) of the Act says: A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

A Landlord has the right to end a tenancy if the rental unit is being used for a close family member. I accept the Landlord and the Landlord's wife's affirmed testimony that the Landlord's wife's father and brother are moving into the unit. The father of a spouse is defined as a close family member. Consequently, I find the Tenant has not established grounds to prove the 2 Month Notice to End Tenancy for Landlord's Use of the Property is not valid. I dismiss the Tenant's request to cancel the Notice to End Tenancy and pursuant to section 55 of the Act I grant the Landlord an Order of Possession effective March 1, 2016 at 1:00 p.m.

Further I find there is no corroborative evidence that supports the Tenant's claim that the tenancy agreement included laundry facilities. In fact the advertisement for the rental unit does not include laundry facilities. I accept the Landlord's testimony and the advertisement for the rental unit that the laundry was not included in the tenancy. I dismiss the Tenant's request for a rent reduction due to services or facilities not provided but indicated in the tenancy agreement.

With respect to the Tenant's request for a rent reduction because of reduced heat in the rental unit from October 13, 2015 to October 27, 2015, I find that as the tenancy is ending March 1, 2016 so a rent reduction while repairs are being complete is not applicable. I dismiss the Tenant's request for a rent reduction due to heating issues.

As the Tenant has not been successful in this matter I order the Tenant to bear the cost of the filing fee of \$50.00 which she has already paid.

Further I order the Landlord to compensate the Tenant \$850.00 at the end of the tenancy March 1, 2016, pursuant to section 51 of the Act when issuing a 2 Month Notice to End Tenancy for Landlord's Use of the Property. As well since the Landlord did not complete a move in condition inspection report as required pursuant to section 24 of the Act the Landlord's claim against the Tenant's security deposit is extinguished. The Landlord has 15 days from the end of tenancy to return the Tenant's security deposit.

Conclusion

The Tenant's application to cancel the Notice to End Tenancy is dismissed without leave to reapply.

An Order of Possession effective March 1, 2016 has been issued to the Landlord. A copy of the Order must be served on the Tenant in accordance with the Act: the Order of Possession and may be enforced in 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: February 16, 2016

Residential Tenancy Branch

