



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF

Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 49; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matter

The person identified as language support for the Landlord initially identified herself as the Landlord’s Agent. This person stated that she had acted as Landlord only at the initial start of the tenancy when she helped the Landlord fill out the tenancy agreement. The person stated that she intended to give witness evidence but was not agreeable to leaving the proceedings until the provision of that evidence. The Landlord stated, in English, that the person was here to support her due to language difficulties. Given the Landlord’s direct evidence of the person’s role at the hearing, considering that there is no evidence to support that that person acted as agent at any time related to the current matter and considering that the person was not willing to leave the proceedings temporarily, I declined to accept this person as an agent or witness able to give evidence of the matter in dispute. I did however allow this person to participate in the proceedings as language support as I accept that English is not the first language of the Landlord and that the Landlord could have difficulties making herself understood in

English. It is noted that after the introduction of the proceedings the Landlord confirmed directly that the introduction was understood. It is also noted that during the hearing the language support person spoke to the Landlord in English and the Landlord responded in both English and another language.

Issue(s) to be Decided

Does the Landlord have a good faith intention to move into the rental unit?

Background and Evidence

The tenancy started on December 1, 2013. Rent of \$1,640.00 is payable on the first day of each month. On February 5, 2016 the Landlord gave the Tenant a one month notice to end tenancy for landlord's use (the "Notice") by leaving the Notice in the house immediately after an inspection.

The Landlord states that she and her son intend to move into the rental unit in Surrey as her son has a job in Langley. The Landlord states that the son, aged 18, has been living in Vancouver with a sibling and grandmother for the past two years following the Landlord's move to a friend's house in Surrey. The Landlord states that she still lives at this location renting a room from a friend but that there is not enough room for her son to live there. The Landlord states that her son was offered and started a job as kitchen help at a restaurant during the 3rd week in February 2016. The Landlord states that her son does not have a car. The Landlord states that she works in Surrey and has a car. The Landlord provided a note from the Langley restaurant dated what appears to be March 1, 2016. The Landlord also submits that she plans on renovating the basement to create a bigger suite.

The Tenant states that the Landlord is trying to evict the Tenant in order to avoid, among other things, a previous finding that the Landlord is not entitled to use the basement suite. The Tenant states that the Landlord lives with her boyfriend in a large house on a large farm. The Tenant states that the Landlord has been living there since before the start of this tenancy. The Tenant provided video evidence and states that

this evidence shows the Landlord speaking to the boyfriend using endearments. The Landlord denies that this person is a boyfriend.

The Tenant states that the Landlord told the Tenant on February 5, 2016 prior to leaving the Notice that if the Tenant did not move her belongings out of the basement the Landlord would be going back to the Residential Tenancy Branch (the "RTB") to get rid of the Tenant. The Tenant states that the Landlord has issued an invalid notice to end the tenancy in the recent past and this is only a continuation of a pattern intended to spite the Tenant for pursuing her rights against the Landlord. The Tenant provides copies of past Decisions. The Tenant states that the son does have a car and that prior to issuing the Notice the son had no job and was not even offered a job.

The Tenant states that the Landlord has also submitted that the Landlord intends to renovate the unit. The Tenant states that this indicates that the Landlord is not going to move into the unit but that the Landlord intends to renovate the basement unit so that it is separate from the rest of the unit and would then be rented out again.

The Tenant submits that this most recent Notice is another in a pattern of the Landlord's attempt to remove the Tenant in any way possible and is also meant to spite the Tenant. The Tenant states that even if the Tenant wished to move out of the unit the Landlord would only provide a bad reference making it difficult for the Tenant and her children to find another suitable residence. It is noted that in a previous Decision dated November 20, 2015 that the Landlord was found to have no right to use any portion of the rental unit.

Analysis

Section 49 of the Act provides that 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.

While I accept that the Landlord's son is now working at the employer in Langley, the note from the employer, dated a month after the Notice was served, does not indicate when the offer was made or whether the job was accepted and if accepted, when the employment started. This note appears to be crafted after the fact and therefore I consider it to be of little weight. The Landlord's own evidence is that the son started the job sometime after the Notice was issued. I find that this employment evidence is convenient and not supportive of a good faith intention at the time the Notice was issued.

Considering the findings of the past Decision, dated November 20, 2015 and the Tenant's video evidence, in particular the evidence of the February 5, 2016 inspection and the Landlord's intention to disregard the Decision, I consider the Tenant's overall evidence of the Landlord's behavior and intentions to be credible and persuasive. I also therefore prefer the evidence of the Tenant that the Landlord is currently living with her boyfriend on a large farm. I do not consider evidence of insufficient room for the son at this current residence to be persuasive. I further note there is no mileage difference between the rental unit and the Landlord's current residence to the place of the son's employment.

I accept therefore that the Landlord is seeking to end the tenancy because of, at a minimum, the Landlord's refusal to accept that the Landlord does not have rights to the basement suite. As a result I find that the Landlord has not substantiated a good faith intention to move into the unit as stated on the Notice and that the Notice is therefore not valid. The Tenant is entitled to its cancellation and the tenancy continues.

As the Tenant's application has met with success I find that the Tenant is entitled to recovery of the \$100.00 filing fee. The Tenant may deduct this amount from future rent payable in full satisfaction of the claim.

Conclusion

The Notice is cancelled and is of no effect. I grant the Tenant an order under Section 67 of the Act for **\$100.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: March 23, 2016

Residential Tenancy Branch