



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, dated March 24, 2016 (the "Application") seeking relief under the Residential Tenancy Act (the "Act"). The Tenant applies for an order cancelling a 2 Month Notice to End Tenancy for Landlord's Use of Property, dated March 17, 2016 (the "2 Month Notice").

The Tenant attended the hearing, assisted by her daughter and advocate, N.D. The Tenant confirmed receipt of the 2 Month Notice, and the Landlord's evidence package.

S.F., the Landlord's property manager, appeared at the hearing on the Landlord's behalf. S.F. confirmed receipt of the Notice of a Dispute Resolution Proceeding, and the Tenant's evidence package.

The hearing process was explained and the participants were asked if they had any questions. All parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

Preliminary and Procedural Matters

The Tenant does not speak English as a first language. Accordingly, N.D., the Tenant's daughter, assisted with translation. The Tenant was given multiple opportunities to be heard during the hearing.

Issue to be Decided

Is the Tenant entitled to have the 2 Month Notice cancelled?

Background and Evidence

I have reviewed all oral and documentary 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.

The Landlord's evidence in support of the 2 Month Notice was heard first. S.F. provided evidence that on March 17, 2016, the Tenant was served with the 2 Month Notice by leaving a copy on the door of the Tenant's rental unit. Pursuant to section 90 of the Act, and in the documents served in this manner are deemed to have been received three days later. I find the 2 Month Notice was duly served on the Tenant on March 20, 2016.

The basis for issuing the 2 Month Notice was elaborated upon by S.F., who advised the Landlord wants to make the rental unit available for his son, who currently resides with the Landlord but is getting married. S.F. advised that he asked the Landlord if he would be willing to cancel the 2 Month Notice and continue the tenancy. However, the Landlord is "adamant" and "very firm" that the rental unit be vacated for use by his son.

The Tenant challenges the Landlord's basis for ending the tenancy. She alleges bad faith on the part of the Landlord. The Tenant says the Landlord issued a 2 month notice to end tenancy about 5 years ago, citing similar reasons. However, the previous 2 month notice to end tenancy was cancelled when, as a result of a request from the Tenant, the Landlord agreed to let the Tenant stay in the rental unit. The Tenant believes, however, that the 2 Month Notice in this instance is a ruse to raise the rent.

In response to the Tenant's reference to a previous 2 month notice to end tenancy, S.F. provided further oral evidence. He confirmed his understanding that the Landlord had at that time issued a 2 month notice to end tenancy and was subsequently granted an order of possession. Neither party provided a copy of documentation in support. However, S.F. confirmed that the Tenant appealed to the Landlord to continue the tenancy. As a result of those discussions, the Landlord agreed to permit the Tenant to remain in the rental unit and the Tenant agreed to a rent increase.

During the hearing, N.D. added that the Tenant is elderly, has lived in the rental unit for about 14 years, and has taken steps to improve the rental unit. The Tenant argued the rental unit is her home. N.D. also raised issues concerning the condition of the washer and dryer, and suggested other rental properties may be available for the son's use.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on the balance of probabilities, I find the following:

Section 49 of the Act permits a landlord to end a tenancy if the landlord or a close family member intends in good faith to occupy the rental unit. The requirement of "good faith" is addressed in Policy Guideline #2, which states: "[g]ood faith is an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage."

When the good faith intent of a landlord is called into question, the burden is on the Landlord to establish that they truly intend to do what they said on the notice to end tenancy. In this case, S.F. has indicated the Landlord intends for his son, who is getting married, to occupy the rental unit.

Although the Tenant has resided in the rental unit for a number of years and is elderly, there has been no evidence of another purpose that negates the honest of intent or demonstrates an ulterior motive for ending the tenancy. As a result, the Tenant's Application is dismissed and the 2 Month Notice is upheld.

When a tenant applies to dispute a notice to end tenancy and is not successful, section 55 of the Act requires that I grant the Landlord an order of possession. Accordingly, I grant the Landlord an order of possession, which will be effective June 1, 2016. Should the Tenant fail to comply with the Order, it may be filed in and enforced as an Order of the Supreme Court of British Columbia

The Tenant has not been successful in her application and is not entitled to recovery of the \$100.00 filing fee.

I note that both parties are aware of the provisions of section 51 of the Act, which provide for compensation to a tenant when a notice to end tenancy is issued pursuant to section 49 of the Act.

Conclusion

The Tenants' application is dismissed without leave to reapply, and the 2 Month Notice is upheld.

Pursuant to section 55 of the Act, I grant an order of possession to the Landlord on the terms outlined above.

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: April 26, 2016

Residential Tenancy Branch