



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 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; and to recover the filing fee from the landlord for the cost of this application.

The tenant and the landlord attended the conference call hearing. The parties gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The parties provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of these documents. 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?

Background and Evidence

The parties agreed that this month to month tenancy started on December 01, 2011. Rent for this unit is currently \$1,000.00 per month and is due on the first of each month. The parties agreed that this was a verbal agreement between the landlord and tenant.

The landlord testified that the property is a 10 acre parcel of land of which 77 percent is zoned for residential use and 23 percent is zoned for special institutional use. The rental unit is a temporary building put up for auxiliary use and for 25 years it was used as a caretaker's unit for the children's institution. The landlord testified that his wife's parents occupied this unit and were caretakers until they passed away in 2006. The unit was then occupied by three nurses working at the institution. The caretaker's duties were then covered by a person who lived in a unit within the institution. After the three nurses qualified to work in BC they moved on and at this time the landlords agreed the tenant could move into the unit to help her out during a financially difficult time.

The landlord testified that the caretaker living in the institution could no longer manage the duties involved with the institution and grounds and she left the position. The landlord created a new position for an off-site caretaker; however, this has proved to be unsuccessful and the grounds and the building have fallen into disrepair. The tenant informed the landlord in February 2016 that her financial position had improved and that she was going to be having surgery in August, 2016. The landlord felt it was a good time to return the unit to its legal use as the caretakers unit. The landlord testified that his wife's sister and her husband are going to become the caretakers and would need to live in the unit. A typed letter was given to the tenant on March 07, 2016 informing the tenant that the landlord was giving her notice to vacate the home on June 01, 2016 as his wife's sister and her husband would be occupying the rental unit.

The landlord testified that the tenant informed him that this was not a legal notice and the tenant filed an application to dispute that notice. The landlord then issued a legal Two Month Notice to End Tenancy (the Notice) and served this to the tenant on March 14, 2016. The Notice has an effective date of May 31, 2016 and provides the reason to end the tenancy as the landlord intends to convert the rental unit for use by a caretaker, manager or superintendent of the residential property. The landlord testified that his wife's sister and husband have now sold their property and will move into the unit on July 01, 2016 and begin working as the caretakers to the property. The unit requires some work before it can be occupied as the tenant informed the landlord that new

carpets and painting is required. The landlord seeks an Order of Possession for May 31, 2016.

The tenant disputed the landlord's claims. The tenant testified that she did not have financial difficulties but when her husband passed away she went to live with her sister and as she was friends with the landlord's wife she asked her to come and live in the rental unit and help her with showing their dogs. The tenant testified that she has taken good care of the home and has partially cared for the land and offered to help out the current caretaker who only lives five blocks away. The disrepair of the institute building has been ongoing for many years.

The tenant testified that she had an argument with the landlord's wife regarding the dogs and then in March she received this typed eviction notice. The tenant agreed she told the landlord that he could not evict her for the reason given on the typed notice as the landlord's wife sister was not a close family member. The landlord then served the tenant with the legal notice and changed the reason on that notice. The tenant testified that there is another unit in the institute that a caretaker has lived in and that is currently occupied by a nurse.

The tenant disputed that the landlord's wife's sister and her husband are coming to live in the rental unit as caretakers as they have never lived on the property. The tenant testified that she believes the landlord has not acted in good faith in issuing this notice and it has been issued for malicious reasons. The tenant seeks to have the Notice cancelled.

Analysis

The *Act* allows a landlord to end a tenancy if the landlord intends in good faith to convert the rental unit for use by a caretaker, manager or superintendent of the residential property. The tenant has disputed the landlord's reason for ending the tenancy based on the previous attempt to evict the tenant with the illegal notice which

stated the landlord's wife's sister and her husband would occupy the rental unit. The tenant has raised questions about the landlord's good faith in ending the tenancy.

If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Two Month Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive for ending the tenancy.

The landlord gave a plausible explanation that the unit was built as an auxiliary unit for the caretaker of the institute and grounds and that it had other uses after his wife's parents passed away. I find the landlord's explanation to be credible that they intend to convert the rental unit back into accommodation for the caretakers of the property and as such his wife's sister and her husband have sold their own property and intend to reside in the unit after the repairs are completed and act as caretakers for the property.

I am therefore satisfied from the evidence before me that the landlord intends to convert the rental unit back into the caretaker's unit and that his sister and brother in law will live in the unit and act as caretakers. Consequently; the Notice is upheld and the tenant's application to cancel the Notice is dismissed.

I refer the parties to s. 55(1) of the *Act* which 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 to the landlord an order of possession of the rental unit if*

- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and*
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.*

Having upheld the Notice I grant the landlord an Order of Possession. The effective date on the Notice is May 31, 2016. I therefore grant the landlord an Order of Possession effective on that date pursuant to s. 55 of the *Act*.

I refer the parties to s.51(1) of the *Act which states*:

51 (1) A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.

I further draw the parties attention to s. 51(2) of the Act which states:

(2) In addition to the amount payable under subsection (1), if

(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or

(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice,

the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

Conclusion

I HEREBY dismiss the tenants' application in its entirety.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective at 1.00 p.m. on May 31, 2016. This Order must be served on the tenant, if the tenant fails to comply

with the Order, the Order may be filed in the Supreme 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: April 27, 2016

Residential Tenancy Branch