



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPL; CNL,

Introduction

This hearing addressed the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order of possession for landlord's use, pursuant to section 55.

This hearing also addressed the tenants' cross application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of a 2 Month Notice to End Tenancy for Landlord's Use of Property, ("2 Month Notice") pursuant to section 49.

The tenants and landlord along with the landlord's agent ("landlord BD") attended the hearing and were each given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The parties confirmed receipt of each other's application for dispute resolution package. In accordance with sections 89 and 90 of the *Act*, I find that the parties were duly served with the applications.

Issue(s) to be Decided

Should the landlord's 2 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Background and Evidence

The landlord assumed this tenancy on April 27, 2016, when the landlord bought the property from the former landlord. The parties testified that this tenancy began with the former landlord on August 27, 2011 on a month to month basis. Monthly rent in the current amount of \$750.00 is payable on the first day of each month. A security deposit of \$375.00 was paid by the tenants at the start of the tenancy. The landlord has not assumed this deposit from the former landlord. The tenants continue to reside in the rental unit.

The landlord testified that the purchase of the property was contingent on the vacant possession of the entire rental property. The landlord testified that on January 31, 2016, the former landlord issued a 2 Month Notice with an effective date of March 31, 2016 however this 2 Month Notice was contested by the tenant and cancelled as a result of inadequate service. In fear of losing the significant security deposit, the landlord completed the sale of the property knowing the tenant had not vacated the rental unit.

On April 3, 2016 the landlord issued a letter to the tenants advising them of the pending sale completion and the requirement of vacant possession.

On April 28, 2016 the landlord issued the 2 Month Notice, indicating that the rental unit will be occupied by the landlord or the landlord's close family member. The notice indicates an effective move-out date of June 30, 2016. The landlord testified that he plans to have his son, who is currently residing at UBC, occupy the rental unit in which the tenant currently resides. In addition the landlord plans to use the second bedroom of the two bedroom rental unit as a guest room for his visiting mother and mother in law.

The tenants testified that after the landlord discovered the former landlord's 2 Month Notice was deemed invalid; the landlord agreed they could remain in the rental unit if they paid \$900.00. The tenants stated that it was after they declined to pay more rent that they received the 2 Month Notice from the current landlord. The tenants contended that the house was large enough to accommodate their family as well as the owners and that it was unfair that they should have to move.

The landlord denied having a conversation with the tenants regarding raised rent and permission to stay. The landlord has submitted a letter dated May 9, 2016 in which the landlord offers financial assistance to cover the costs of moving and new rental unit.

Analysis

Section 49 of the *Act* allows a landlord to end a tenancy if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

The tenants questioned the good faith of the landlord suggesting the 2 Month Notice was a direct result of their refusal to pay more rent. The tenants did not provide a date in which this alleged conversation took place nor substantiate it with any other form of evidence. I prefer the evidence of the landlord. The April 3, 2016 letter is consistent with the 2 Month Notice showing the landlord's intent to occupy. Further the May 9, 2016 letter in which the landlord offered financial assistance to the tenants is

incongruent with the tenants' testimony that he was seeking more money from them. I find it more probable that from the onset of purchasing the property the landlord intended his family to occupy the rental unit but was restricted from doing so. Accordingly, I find the landlord has not acted in bad faith in issuing the 2 Month Notice.

Based on these reasons I find the landlord was entitled to end the tenancy with a 2 Month Notice. Accordingly, I dismiss the tenants' application to cancel the 2 Month Notice and uphold the landlord's 2 Month Notice. I find the landlord is entitled to an order of possession, effective at 1:00 p.m. on June 30, 2016, pursuant to section 55 of the *Act*.

Conclusion

I grant an order of possession to the landlord **effective at 1:00 p.m. on June 30, 2016**.

The tenants' application to cancel the 2 Month Notice is dismissed without leave to reapply.

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: June 16, 2016

Residential Tenancy Branch