



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 2224 ALBERTA STREET HOLDINGS INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL, OLC, FF

Introduction

On June 3, 2016, the Tenants submitted an Application for Dispute Resolution asking that a 2 Month Notice to End Tenancy for Landlord Use of Property (“the 2 Month Notice”) be cancelled, for the Landlord to comply with the Act; and to recover the filing fee for the Application.

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

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.

Preliminary Issues

The Tenant testified that she provided a copy of the 2 Month Notice when she applied for dispute resolution; however, the documentary evidence from the Tenant that I have before me does not contain a copy of the 2 Month Notice. At the end of the hearing, I asked the Landlord to fax me a copy of the 2 Month Notice. I received a fax copy of the 2 Month Notice from the Landlord on July 11, 2016. The date of the 2 Month Notice and the effective date of the Notice are the same as provided in testimony by the Landlord and Tenant in the hearing.

Issues to be Decided

Is the 2 Month Notice to End Tenancy for Landlord’s Use of Property an effective Notice?

Is the tenancy ending?

Background and Evidence

The Landlords and Tenant both testified that the tenancy began in August, 2008, as a one year fixed term that continued thereafter as a month to month tenancy. Rent in the amount of \$1,180.00 is payable on the first of each month and a \$475.00 security deposit was paid to the Landlord.

The Landlords testified that they posted the 2 Month Notice dated May 30, 2016, to the Tenant's door of the rental unit on May 30, 2016. The Notice indicates that the rental unit will be occupied by the Landlord or the Landlord's spouse or a close family member of the Landlord or the Landlord's spouse. The 2 Month Notice indicates that the Tenant must move out of the rental unit on August 1, 2016. The 2 Month Notice also states that the Tenants can dispute the Notice by filing an application for dispute resolution within 15 days of receiving the Notice.

The Tenant testified that she received the 2 Month Notice that was posted to her door on May 31, 2016. The Tenants disputed the 2 Month Notice by filing for dispute resolution on June 3, 2016.

The burden to prove the reason for ending the tenancy rests with the Landlords. The Landlords testified that they recently purchased the residential property. They testified that they have three children and that they own a number of properties. The Landlords testified that the 2 Month Notice was issued to the Tenants in good faith. The Landlords testified that their son M.C. is moving to Vancouver and will be moving into the rental unit.

The Tenant testified that she feels the 2 Month Notice was issued in bad faith. She testified that other residents of the property have been evicted for the same reason as stated on the 2 Month Notice issued to her. The Tenant also submits that the 2 Month Notice was issued immediately after she asked the Landlords to fix her fridge.

The Tenant provided documentary evidence of two other 2 Month Notices that were issued by the Landlords to other residents in the residential property on May 19, 2016. The Tenant submits that those 2 Month Notices are dated the same as the 2 Month Notice issued to her. The Tenant submits that one of the 2 Month Notices contains the same reason as the Notice issued to her; that the rental unit will be occupied by the Landlord's or the Landlord's spouse or a close family member of the Landlord or the Landlord's spouse.

The Landlords responded by testifying that their daughter will be moving into one of the units and that they have hired a care taker or superintendent to move into the other unit. The Landlord testified the rental property currently contains 12 units.

The Tenant requests an order that the Landlords comply with the compensation provisions of section 51 of the Act if the Landlord's 2 Month Notice to end tenancy is upheld. The Tenant seeks compensation should the Landlord not use the rental unit for the stated purpose for at least 6 months.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

While I acknowledge the Tenant's testimony that the 2 month Notice was punitive and not issued in good faith, the Landlord testified that the Notice was issued because the Landlord wants to use the property for a family member. The Landlord also testified that the fridge was fixed the next day. There is insufficient evidence from the Tenant to establish that the Landlords' son is not moving into the rental unit. I am satisfied with the Landlord's testimony that the Landlord intends to use the rental unit for the purpose stated within the 2 Month Notice.

I find that regardless of the number of rental units the Landlords owns, the Landlords have the right to decide which rental units they wish family to occupy.

I dismiss the Tenants application to cancel the 2 Month Notice to End Tenancy For Landlord's Use Of Property dated May 30, 2016. The tenancy is ending.

With respect to the Tenant's request for the Landlords to comply with Section 51 of the Act, it is premature for the Tenant to request an order for the Landlord to comply with paying compensation if the Landlord does not use the rental unit for the stated purpose for at least 6 months. The Tenant has leave to reapply for compensation should the Landlord breach the provisions of section 51 of the Act.

Under section 55 of the Act, when a Tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlords an order of possession.

I find that the Notice complies with the requirements regarding form and content and I find that the Landlords are entitled to an order of possession effective by 1:00 p.m. on August 1, 2016, after service on the Tenants. This order may be filed in the Supreme Court and enforced as an order of that Court.

As the Tenants were not successful in their application, I decline recovery of the fee that the Tenants paid to make application for dispute resolution.

Conclusion

The Tenant's application is dismissed. The 2 Month Notice to End Tenancy For Landlord's Use Of Property dated May 30, 2016, is upheld. The tenancy is ending.

I grant the Landlords an order of possession effective by 1:00 p.m. on August 1, 2016. The Tenants must be served with the order of possession. Should the Tenants fail to comply with the order, the order may be filed in the Supreme Court of British Columbia 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: July 11, 2016

Residential Tenancy Branch