



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes CNL

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of a 2 Month Notice to End Tenancy For Landlord's Use of Rental Property, pursuant to section 49;

The hearing was conducted by conference call. All named parties attended the hearing.

Preliminary Issue – Late Evidence

Rule 3.14 of the Residential Tenancy Branch (the Branch) Rules of Procedure requires an applicant's evidence to be received by the respondent and the Branch not less than 14 days before the hearing. The tenant submitted additional evidence that was received by the Branch on July 4, 2016 and July 5, 2016. The tenant failed to show why this evidence was not available at the time the tenant's original evidence package was submitted. This evidence was not accepted or considered in this decision.

Issues

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

Background & Evidence

I have reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure. However, only the evidence relevant to the issue and findings in this matter are described in this Decision. The facts in this case were essentially not in dispute are as follows:

The rental unit is a 1-bedroom studio suite on the lower level of a detached two-story house containing three suites on the main level and two suites on the lower level.

The tenancy began on July 1, 2015. The written tenancy agreement entered into by the parties stipulated that the tenancy was "for a period of 6 months to 1 year or more". The monthly rent is \$1250.00 and is payable on the 1st day of each month.

The rental property is dispute is currently being managed on an interim basis by S.L. who represented the landlord in this hearing. S.L. is a full-time teacher and is also the manager of operations of an 89-room hotel property owned by the landlord, which is a family run business. The landlord has various rental properties and it is not uncommon for her to have family employed by her to manage these properties. S.L. assumed the manager duties of the dispute address in February 2016 after an incident occurred between the tenant and the landlord's sister Ms. D, who resides in one of the upper suites in the rental property. The incident involved an allegation that the tenant had hit Ms. D and the incident was reported to the police. Shortly after this incident there was an allegation by the tenant that Ms. D's son had come to her rental unit and threatened her. S.L. and the landlord were out of the country at the time of these incidents and upon their return they did not take any action as there was not any concrete evidence from either party involved in the incidents.

Prior to the above incidents, Ms. D would help collect rent from other tenants at the rental property but refused to continue to collect rent from the tenant after the above incident. Ms. D's son was responsible for performing any necessary repairs at the rental property and after the above incident the tenant advised that she no longer felt comfortable with Ms. D's son entering her rental unit. S.L. agreed that either she or her daughter would accompany Ms. D's son if he needed to enter the rental unit for any reason. S.L. refused the tenants request to completely restrict Ms. D's son from entering unless the tenant filed a police report or had a restraining order against him. S.L. presented text message evidence confirming that since the February incident, the tenant had allowed Ms. D's son unaccompanied entry to the rental unit for making repairs without any further incident. Ms. D's son had written a letter of apology to the tenant after the February incident. S.L. had requested a letter of apology from the tenant as well but she refused stating she had not done anything wrong. Text message evidence on file supports S.L.'s testimony that she did not take sides and attempted to rectify any concerns the tenant may have had.

Since the February incident, there were no significant issues or concerns with the tenancy aside from some issues with the tenant's scooter. Towards the end of March 2016 there was a complaint from an upstairs tenant with respect to the parking of the tenant's scooter. The tenant was issued a letter and a map advising her where she was permitted to park her scooter and the matter was resolved. The tenant submits there were also various issues with respect to her where she was allowed to plug in her scooter and at times she would find it unplugged or the circuit breaker being shut off not allowing her scooter to charge. The tenant acknowledged that there has not been any issue with the scooter being unplugged over the past 5 months. The tenant also alleged that Ms. D's son had cut the brakes and switched off the alarm of her scooter but did not have any evidence to support these allegations.

The landlord served the tenant with a 2 Month Notice on May 26, 2016 by posting it to the tenant's door. The tenant acknowledged service of the 2 Month Notice. The Notice has an effective date of July 31, 2016. The landlord cited the following reason on page 2 of the Notice:

- *The landlord intends to convert the rental unit for use by a caretaker, manager or superintendent of the residential property.*

S.L. submits that the landlord intends to have her granddaughter J.K. assume the management responsibilities of the rental property. This will be a paid position and although she is the granddaughter of the landlord, it will be a paid position and her primary duties will be that of a caretaker. The suite currently occupied by the tenant will be converted for use by her granddaughter. J.K. has in the past been employed in a management capacity with the landlord's hotel property. In 2015, J.K. had taken time off from her managerial duties at the hotel and moved to California to be with family. J.K. has since returned and currently resides with her mother in the basement of the landlord's home which is just three doors down from the rental unit. J.K. currently manages multiple other rental properties plus a registered charity and requires onsite living accommodation for herself and her two dogs in order to manage the rental property is dispute.

S.L. further submits that the three units on the main floor all have long-term tenants who have been residing in those suites for 10+ years. The other lower suite has a fixed term lease arrangement until October 1, 2016. The original lease with the tenant was for a minimum 6-month period that has been fulfilled and the tenant is now on a month-to month lease.

The tenant is disputing the 2 Month Notice on the grounds that it was not issued in good faith. The tenant relies on the incidents described above with the landlord's sister, Ms. D. and her son, as evidence of the landlord not acting in good faith. The tenant's advocate submits that following the incidents the landlord did not have enough evidence to pursue an end to the tenancy based on cause and now is attempting to end the tenancy on the grounds that her granddaughter will be the caretaker of the rental property. The tenant also submits that the original lease was for a 1 year fixed term and the landlord broke the lease by issuing the 2 Month Notice.

Analysis

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

Section 49 of the Act contains provisions by which a landlord may end a tenancy for landlord's use of property by giving notice to end tenancy. Pursuant to section 49(8) of the Act, a tenant may dispute a 2 Month Notice by making an application for dispute resolution within fifteen days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the 2 Month Notice.

Further, 2 Month Notices have a good faith requirement. *Residential Tenancy Policy Guideline #2 "Good Faith Requirement when Ending a Tenancy"* provides the following guidance:

A claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End 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 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.

It was not disputed that there were two significant incidents that occurred during this tenancy involving the tenant and the landlord's sister, Ms. D. and her son. However, these incidents occurred approximately 3 months prior to the 2 Month Notice being issued by the landlord. Further, the evidence supports the landlord's argument that the landlord did not take sides following the incident or pursue any action against the tenant following these incidents. Rather the landlord requested both parties submit apology letters in an attempt to rectify the situation. Following these two incidents there was not any evidence of any significant concerns aside from common tenancy issues which were for the most part resolved.

Further, I find that the evidence supports that the landlord intends in good faith to have her granddaughter J.K. employed as a caretaker of the rental property. The landlord submitted evidence that J.K. has previously been employed in this capacity managing other rental properties of her own and on behalf of the landlord. I also accept the landlord's evidence that the tenant's suite is the most suitable for use by a caretaker as the others have long term tenants and one tenant on a fixed term contract. The tenant's lease was entered into on July 1, 2015 and whether the lease was for a 6 month term or 1 year term as submitted by the tenant, that lease is now expired and on a month-to-month basis.

It is possible that the landlord's decision to have an on-site caretaker was partly influenced as a result of the incidents that occurred involving the tenant back in February 2016. As a result of these incidents, the landlord's sister refused to collect rent from the tenant on behalf of the landlord and the tenant had concerns with the son entering her unit for repairs. However, this does not take away from my finding on whether or not the landlord has a good faith intention to convert the rental unit for use by a caretaker. The fact that there may have been some issues with the tenancy in the past does not in this case provide the tenant with any greater protections under the Act. Rather, this evidence supports the landlord's argument that an on-site caretaker is required. Unfortunately for the tenant, it is her unit that the landlord has decided to convert.

I find that the landlord has provided sufficient evidence to justify that it had a good faith intention to issue the 2 Month Notice. The tenant's application to cancel the 2 Month Notice is dismissed and the landlord is entitled to an Order of Possession pursuant to section 55 of the Act.

Conclusion

I grant an Order of Possession to the landlord effective **1:00 p.m. on July 31, 2016**. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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 19, 2016

Residential Tenancy Branch