



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

This matter dealt with an application by the Tenant to cancel a 2 Month Notice to End Tenancy for the Landlord's Use of the property.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the "hearing package") by personal delivery on August 30, 2016. Based on the evidence of the Tenant, I find that the Landlord was served late with the Tenants' hearing package, but I will accept service as it did not prejudice the Landlord's position and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Is the Tenant entitled to an order to cancel the Notice to End Tenancy?

Background and Evidence

The Tenants moved into the rental unit approximately 5 years ago and this tenancy started on April 1, 2016 when the Landlord purchased the property. The tenancy is verbal and on a month to month basis. Rent is \$1,200.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$550.00 at the start of the tenancy.

The Landlord said she served the Tenants on August 2, 2016 in person with a 2 Month Notice to End Tenancy for Landlord's Use of the Property dated July 31, 2016. The Notice has an effective vacancy date of September 30, 2016. The Landlord continued to say that her and her family are planning to move into to this rental unit when it is vacant. The Landlord said they did not move in to the unit when they first bought the property because her husband was out of town working and a move was not convenient for them. The Landlord said her husband is back in town and they want to move into the rental unit as soon as possible. The Landlord said she and her family are living with her in-laws at the present time. The Landlord said they want to end the tenancy so they can move into the rental unit.

The Tenant said the when the Landlord purchased the rental unit in April, 2016 she told the Tenants the rental unit was and investment property for the Landlord and her sister. Following this the Tenant said the Landlord repeatedly tried to increase the rent and have the Tenants pay the utilities for the property. The Tenant said the Landlord's actions were close to harassment. The Tenant continued to say that she does not believe the Landlord is moving into the property as the Landlord said she may have other tenants for the property. The Tenant said they have been good tenants over the years and this owner is not telling the truth. The Tenants said they will move out but they do not believe the Landlord has been truthful with them.

The Landlord said this is not an investment property and her family will be moving into the unit as soon as it is vacant. The Landlord said she has told the true to the Tenants and to the hearing. The Landlord said they are the owners of the property and the Landlord and her family wants to move into the unit.

The Tenant said in closing that she believes the Landlord is not acting in good faith, but the Tenant said they understand and will move out by October 31, 2016 as they received the Notice to End Tenancy on August 2, 2016.

Analysis

Section 49 (3) of the Act says: A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

A Landlord has the right to end a tenancy if the rental unit is being used for the owner or a close family member. I accept the Landlord's affirmed testimony that the Landlord and her family are moving into the unit as soon as they are able too. Consequently, I find the Tenant has not established grounds to prove the 2 Month Notice to End Tenancy for Landlord's Use of the Property is not valid. I dismiss the Tenant's request to cancel the Notice to End Tenancy dated July 31, 2016 and pursuant to section 55 of the Act I grant the Landlord an Order of Possession effective October 31, 2016 at 1:00 p.m. Section 53 of the Act automatically changes an effective vacancy date on a Notice to End Tenancy if the date is incorrect. Since the Notice to End Tenancy was served on August 2, 2016 the effective vacancy date is October 31, 2016 not September 30, 2016 as indicated on the Notice to End Tenancy.

Further I order the Landlord to compensate the Tenant \$1,200.00 at the end of the tenancy or provide the October, 2016 rent at no charge, pursuant to section 51 of the Act when issuing a 2 Month Notice to End Tenancy for Landlord's Use of the Property. As well since the Landlord did not complete a move in condition inspection report, as required pursuant to section 24 of the Act, the Landlord's claim against the Tenants' security deposit is extinguished. The Landlord has 15 days from the end of tenancy to return the Tenants' security deposit.

Conclusion

The Tenant's application to cancel the Notice to End Tenancy is dismissed without leave to reapply.

An Order of Possession effective October 31, 2016 has been issued to the Landlord. A copy of the Order must be served on the Tenants in accordance with the Act: the Order of Possession and may be enforced in 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: September 12, 2016

Residential Tenancy Branch