



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 as a result of the Tenants' Application for Dispute Resolution, received at the Residential Tenancy Branch on August 3, 2016 (the "Application").

The Tenant applied for the following relief pursuant to the *Residential Tenancy Act* (the "Act"): an order cancelling a 2 Month Notice to End Tenancy for Landlord's Use of Property, signed and dated August 2, 2016 (the "2 Month Notice"); and an order granting recovery of the filing fee.

The Tenant attended the hearing on her own behalf. The Landlord also attended on her own behalf and was assisted by her niece, J.V. All parties giving evidence provided their solemn affirmation.

No issues were raised with respect to service and receipt of the Notice of a Dispute Resolution Hearing, or of the parties' respective evidence.

The parties were provided an opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer to only the relevant facts and issues in this Decision.

Issues

1. Is the Tenant entitled to an order cancelling the 2 Month Notice?
2. Is the Tenant entitled to an order granting recovery of the filing fee?

Background and Evidence

A written tenancy agreement was not submitted into evidence by either party. However, the parties agreed the tenancy commenced on a month-to-month basis on or about August 1, 2015. Rent in the amount of \$1,100.00 per month is due on the first day of each month. The Tenant paid a security deposit in the amount of \$550.00.

The Landlord provided her evidence first. According to J.V., the Landlord initially issued a written notice to end the tenancy on or about July 9, 2016. A copy was submitted with the parties' documentary evidence. In it, the Landlord requested that the Tenant vacate the rental unit before March 1, 2017. J.V. stated the Landlord did not understand she was only required to provide two months' notice and was trying to give the Tenant as much time as possible.

The written notice also provided for a rent increase of \$100.00 per month. However, the Landlord subsequently learned that notices to increase rent need to be in the approved form and that tenants must be given three months' notice before the increase takes effect. The Tenant confirmed she has continued to pay rent of \$1,100.00 per month in accordance with the tenancy agreement.

With respect to the notice to end the tenancy, both parties provided oral testimony confirming the Tenant requested notice in the approved form. Accordingly, the Landlord, after a discussion with a representative of the Residential Tenancy Branch, issued the 2 Month Notice on August 2, 2016. The effective date of the 2 Month Notice is October 31, 2016.

The Landlord's written submissions state the 2 Month Notice was issued for the following reason:

"The reason for the notice to end tenancy is because I have an eighty-five years old mother who mobility is limited, she cannot climb stairs. We need this premises back so my mother can live in it. With no stairs my can have easy access in and out of the house." [reproduced as written]

The Tenant also provided oral testimony. She submitted that the initial notice to end tenancy and notice of rent increase were not issued correctly, which the Landlord acknowledged. In her oral testimony, the Tenant suggested the reasons the Landlord wishes to end the tenancy are to renovate the rental unit, to remove a difficult tenant, and because there are too many occupants in the rental unit.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 49(3) of the *Act* states:

“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.”

Residential Tenancy Branch Policy Guideline 2 elaborates upon the meaning of “good faith”. It states:

“Good faith is an abstract and intangible quality that encompasses an honest intention, the absence of malice and no ulterior motive to defraud or seek an unconscionable advantage.

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.”

The Landlord’s oral testimony and written submissions confirm she wishes for her elderly, disabled mother to move into the rental unit. Although the Tenant has made allegations that the Landlord had ulterior motives for ending the tenancy and has not acted in good faith, I find there is insufficient evidence before me to conclude the Landlord has acted in bad faith.

In light of the above findings, the Tenant’s Application is dismissed. In accordance with the 2 Month Notice, the tenancy will end on October 31, 2016.

When a tenant's application to cancel a notice to end tenancy has been dismissed, section 55 of the *Act* requires that I issue an order of possession in favour of the landlord if the notice complies with section 52 of the *Act*. Having reviewed the 2 Month Notice, I find it complies with section 52 of the *Act*. Accordingly, by operation of section 55 of the *Act*, I grant the Landlord an order of possession which will be effective October 31, 2016, at 1:00 p.m.

As the Tenant has not been successful, I decline to award recovery of the filing fee.

The parties are reminded of their duties and responsibilities at the end of a tenancy, as articulated in sections 35-39 and 50-51 of the *Residential Tenancy Act*.

Conclusion

The Tenant's Application is dismissed.

By operation of section 55 of the *Act*, I grant the Landlord an order of possession, which will be effective October 31, 2016, at 1:00 p.m. This order may be filed in 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: September 21, 2016

Residential Tenancy Branch