



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

This hearing was convened by way of conference call in response to the tenant's application for an Order to cancel a Two Month Notice to End Tenancy for landlord's use of the property.

The tenant, the landlord, a translator/agent for the landlord and a witness attended the conference call hearing, and were given the opportunity to be heard, to present evidence and to make submissions under oath. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. 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.

Issue(s) to be Decided

Is the tenant entitled to an Order to cancel the Two Month Notice to End Tenancy?

Background and Evidence

The parties agreed that this month to month tenancy started on October 01, 2016. Rent for this unit is \$900.00 per month due on the 1st of each month.

The landlord's agent testified that the tenant was served a Two Month Notice to End Tenancy for landlord's use of the property (the Notice) on January 20, 2017 in person. A copy of the Notice has been provided in documentary evidence. The Notice has an effective date of March 31, 2017 and provided the following reason to end the tenancy:

The rental unit will be occupied by the landlord, or the landlord's close family member (parent, spouse or child or the parent or child of that individual's spouse).

The landlord's agent testified that she is the daughter of the landlord and her and her fiancé want to move into the rental unit. The landlord's agent testified that she has sold her apartment as it was a small space and they will live in her parent's rental unit for free while they save up for a larger home because they are getting married on May 30, 2017 and want to start a family. As the cost of purchasing a larger home is high they can rely on her parents to provide care for any children they have while they save for a new home. The landlord's agent testified that it is their intention to live in this unit for four or five years in order to save enough money.

The landlord's agent testified that her apartment was sold on February 11, 2017 and the sale completes on May 30, 2017 and their wedding is booked for May 21, 2017. This will give them time to do any renovations or repairs and to move slowly into the unit after the wedding. The landlord's agent referred to their documentary evidence showing the listing for her apartment and the purchase contract.

The landlord's witness is the fiancé of the landlord's agent and he testified that they intend to move into the unit on May 31, 2017 and are getting married on May 21, 2017. They intend to live in the unit for around five years because they want to have children and the cost of daycare is very high when they are trying to save for a new home. The witness testified that the possession date on their current unit is May 31, 2017 but they need the time to do renovations before they move into this unit.

The tenant testified that two or three months ago the landlord served another Notice to end tenancy and tried to evict the tenant; however, at the hearing the landlord was unsuccessful because he lied and said he was going to be moving into the unit. The tenant testified that the landlord is trying to evict the tenant because he does not like her and she has let an autistic man live in the unit with her and this frightens the landlord, even though the tenant has assured the landlord that her friend is no problem.

The tenant testified that she believes the landlord has provided this Notice in bad faith. The landlord's daughter is saying she wanted to sell her apartment because it was too small yet this rental unit is even smaller than her apartment. The landlord's daughter would have made money on her apartment and they should use this to purchase a larger home.

The tenant asked the landlord's agent if their wedding date is May 21, 2017 and they hope to move in on May 31, 2017 then won't this be hectic. The landlord's agent responded that they planned it this way so they had a week to prepare for the move after the wedding. The tenant asks the landlord's agent why she is moving into a smaller place. The landlord's agent responded that her parents want to help them.

The landlord requested that the Notice is upheld and seeks an Order of Possession for March 31, 2017.

The tenant seeks to have the Notice set aside and for the tenancy to continue.

Analysis

After careful consideration of the testimony and documentary evidence before me and on a balance of probabilities I find as follows:

The only issue to be decided is whether the landlord has met what Residential Policy Guideline #2 describes as a two part test:

The "good faith" requirement imposes a two part test. First, the landlord must truly intend to use the premises for the purposes stated on the notice to end the tenancy. Second, the landlord must not have a dishonest or ulterior motive as the primary motive for seeking to have the tenant vacate the residential premises. For example, the landlord's daughter and her fiancé may intend to occupy the rental unit as stated on the notice to end tenancy. That intention may; however, be motivated by dishonest or undisclosed purposes. If the primary motive for the landlord ending the tenancy is to retaliate against the tenant, then the landlord does not have a "good faith" intent. Similarly, if the landlord is attempting to avoid his/her legal responsibilities as a landlord, or is attempting to obtain an unconscionable or undue advantage by ending the tenancy, the intent of the landlord may not be a "good faith" intent. Rather, the circumstances may be such that dishonesty may be inferred.

If the "good faith" intent of the landlord is called into question, the burden is on the landlord to establish that he/she truly intends to do what the landlord indicates on the Notice to End, and that he/she is not acting dishonestly or with an ulterior motive for ending the tenancy as the landlord's primary motive.

On the first part of the test, that is whether the landlord's close family member namely his daughter truly intends to occupy the rental unit; I accept the landlord's evidence before me that his daughter and her fiancé do truly intend to occupy the rental unit after they marry with the intention of being able to live rent free and have free care for any children that come along while they save for a new home large enough to accommodate them as a family.

Despite the fact that the landlord had previously attempted to evict the tenant there is no evidence to suggest that the landlord has a dishonest intent or an ulterior motive in evicting the tenant with this current Notice.

Clearly the landlord's daughter has now sold her apartment and I find it plausible that their intention is to live in this rental unit for the foreseeable future.

I will however, refer the parties to s. 51 (1) and 51(2) of the Act which state

51 (1) *A tenant who receives a notice to end a tenancy under section 49 [landlord's use of property] is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement.*

(2) In addition to the amount payable under subsection (1), if

(a) steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 within a reasonable period after the effective date of the notice, or

(b) the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice, the landlord, or the purchaser, as applicable under section 49, must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

Consequently the tenant's application to dispute the Notice is dismissed.

I refer the parties to s. 55(1) of the *Residential Tenancy Act* (Act) which states:

55 (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if*

(a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I find the Two Month Notice does comply with s. 52 of the *Act* and as I have dismissed the tenant's application to cancel the Notice I issue the landlord an Order of Possession on the effective date as shown on page one of the Notice of March 31, 2017, pursuant to s. 55 of the *Act*.

Conclusion

The tenant's application is dismissed without leave to reapply.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective on March 31, 2017. This Order must be served on the tenant. If the tenant remains in Possession of the rental unit and does not relinquish that possession to the landlord then 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: February 27, 2017

Residential Tenancy Branch

