



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

CNC

Introduction

This is an application brought by the tenant(s) requesting an order canceling a Notice to End Tenancy that was given for cause.

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All parties were affirmed.

Issue(s) to be Decided

The issue is whether or not to cancel or uphold a one month Notice to End Tenancy.

Background and Evidence

This tenancy began on June 15, 2016, with a monthly rent of \$2000.00, due on the first of each month.

On February 20, 2017 the landlord personally served the tenants with a one-month Notice to End Tenancy giving the following reason:

- Rental unit/site must be vacated to comply with a government order.

The landlord testified that on February 9, 2017 a Bylaw Enforcement Officer inspected the rental property, and subsequently issued an order stating that the rental property was not in compliance with the bylaws.

The order also stated the following:

- To rectify this bylaw violation you are directed to have the secondary suite removed, and reduce the number of unrelated occupants to a maximum of four before my next visit which will be April 1, 2017.

The landlord testified that, in order to comply with this order, she chose to give an eviction to these tenants, and thereby reduce the number of tenants below the maximum of four allowed under the bylaw.

Landlord further testified that they are also removing the kitchen from the lower portion of the house, so that there is no longer a secondary suite in the rental property.

The advocate for the tenants argued that the tenants do not need to vacate the rental unit for this unit to comply with the order of the bylaw officer, and further argued that since the downstairs suite is the secondary suite that needs to be removed, it is the downstairs tenants that should be evicted to rectify the violation.

The advocate for the tenants further argued that it makes much more sense to evict the downstairs tenants from the secondary suite, as the upper portion of the house is the main rental unit, and the landlord should never have put people in the secondary suite in the first place, as it did not comply with the bylaws.

In response to the advocate's arguments the landlord stated that, the order from the Bylaw Enforcement Officer does not specify which tenants need to be removed to comply with the order, it simply states that there can be no more than four unrelated tenants in the rental unit.

The landlord further testified that she is required to comply with the order by April 1, 2017 and, in order to do that, she has chosen to evict the applicants.

Analysis

The order from the Bylaw Enforcement Officer does not require that the tenants in the secondary suite be evicted, it only requires that the secondary suite be removed and that the number of occupants in the rental unit be reduced to, no more than, four unrelated occupants.

Further, when an order is issued by a Bylaw Enforcement Officer, there is nothing in the Residential Tenancy Act that requires a landlord to remove the most recent tenants, or to remove the tenants in the noncomplying secondary suite.

Section 47(1)(k) of the Residential Tenancy Act simply states:

47(1)A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(k) the rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority;

Therefore, it is basically left up to the landlord to decide how the unit will be brought into compliance, and in this case the landlord has chosen to evict the applicants.

I can certainly understand how the applicants would believe that this is unreasonable, however, had the landlord evicted the other tenants on the rental property, I am sure, they too would believe it is unreasonable.

It is my decision therefore that the landlord does have the right to evict the applicants to bring this rental unit into compliance with the order from the Bylaw Enforcement Officer, and I will not cancel the Notice to End Tenancy.

Section 55 of the Residential Tenancy Act 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.

In this case I have examined the Notice to End Tenancy and it is my finding that it does comply with section 52 of the Act.

Conclusion

I therefore dismiss this application without leave to re-apply, and, having determined that the landlord's notice to end tenancy complies with section 52 of the Act, I have issued an Order of possession, pursuant to Section 55 of the Act, for 1:00 p.m. on March 31, 2017.

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: March 22, 2017

Residential Tenancy Branch