

## **DECISION**

### **Dispute Codes**

LANDLORD: OPL, FF  
TENANT: CNL, OLC, PSF, FF

### **Introduction**

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlords and the Tenant.

The Landlords filed seeking an Order of Possession and to recover the filing fee for this proceeding.

The Tenant filed to obtain an order to cancel the Notice to End Tenancy and if successful; for the Landlord to comply with the Act, regulations and tenancy agreement, to provide services and facilities and to recover the filing fee for this proceeding.

Service of the hearing documents by the Landlords to the Tenant were done by registered mail on April 5, 2017 in accordance with section 89 of the Act.

Service of the hearing documents by the Tenant to the Landlords were done by registered mail on March 24, 2017 in accordance with section 89 of the Act.

Both parties confirmed receiving the other parties hearing package.

### **Issues to be Decided**

Landlord:

1. Are the Landlords entitled to an Order of Possession?

Tenant:

1. Is the Tenant entitled to an Order to cancel the Notice to End Tenancy?
2. Has the Landlord complied with the Act, regulations for tenancy agreement?
3. Have services and facilities been provided as agreed?

### Background and Evidence

This tenancy started on March 1, 2016 as a fixed term tenancy with an expiry date of February 28, 2017 and then continued on a month to month basis. Rent is \$1,750.00 per month payable on the 1st day of each month. The Tenant paid a security deposit of \$875.00 and a pet deposit of \$250.00 on April 15, 2016.

The Landlords' Counsel said the Landlords issued a 2 Month Notice to End Tenancy for the Landlords' Use of the Property on March 14, 2017, because the Landlords' son E. is moving into the rental unit. The Landlords' Counsel said the effective vacancy date on the Notice to End Tenancy is June 1, 2017 and the Landlords are requesting an Order of Possession for that date if the Landlords are successful in their application. The Landlord continued to say her son E. is living in the lower suite at the present time and when the Tenant vacates the upper suite their son E. is moving into the upper unit.

The Tenant said she believes the Landlords issued the Notice to End Tenancy in retaliation for her previous dispute resolution application. The Tenant said she does not believe the Landlords are acting in good faith but she understands the Landlords' son E. may move into the upper unit when she vacates. The Tenant said she will monitor the situation and if the Landlords do not implement the Notice to End Tenancy for Landlord's Use of the Property as indicated she will make another application for compensation. The Tenant said she is not disputing that the Landlords' son E. may be moving into the unit she now occupies.

The Tenant said if she gives notice to move out earlier than June 1, 2017, the effective vacancy date on the Notice to End Tenancy, she is entitled to compensation on a prorated basis. The Tenant said she will be giving written notice to vacate today with a move out date of May 5, 2017. The Tenant said she would like the Landlord to pay her the compensation in cash on the day she moves out.

Further the Tenant said since the tenancy is ending she is withdrawing her applications for the Landlord to Comply with the Act, regulations and the tenancy agreement and for the Landlord to provide services and facilities as agreed.

The Landlords' Counsel said they understand the Tenant's compensation claim and will wait for the Tenant to give written Notice to End the Tenancy in compliance with the Act and regulation.

The Landlord and the Tenant also said they are both seeking to recover the \$100.00 filing fee for this proceeding.

The Tenant said in closing this has been a very difficult tenancy and she believes the Landlords and their son E. have treated her poorly, without respect and in bad faith.

The Landlords' Counsel said in closing this has been a stressful experience for the Landlords and they no longer want to be landlords and just want to move on with their lives

### 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 Landlords' son E. is moving into the unit as soon as he is 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 application and request to cancel the Notice to End Tenancy dated March 14, 2017. Further pursuant to section 55 of the Act I grant the Landlord an Order of Possession effective June 1, 2017 at 1:00 p.m.

Further as the tenancy is ending the Tenant has withdrawn the claims for the Landlords to Comply with the Act, regulations and tenancy agreement and for the Landlord to provide services and facilities; therefore these issues are dealt with.

With respect to the parties claims to recover the filing fee. I order the Tenant to bear the cost of the filing fee of \$100.00 which is paid as the Tenants application is dismissed. Further I order the Landlords to recover the \$100.00 filing fee from the Tenant by deducting it from the compensation due to the Tenant under section 49 of the Act when a 2 Month Notice to End Tenancy for Landlord's Use of the Property is issued.

### Conclusion

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

An Order of Possession effective June 1, 2017 has been issued to the Landlord. A copy of the Order must be served on the Tenant 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: April 25, 2017.

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Residential Tenancy Branch