

DECISION

Dispute Codes CNL, OLC, FF

Introduction

This matter dealt with an application by the Tenant to cancel a Notice to End Tenancy for the Landlords' Use of the Property, for the Landlord to comply with the Act, regulations and tenancy agreement and to recover the filing fee for this proceeding.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the "hearing package") by registered mail on April 24, 2017. Based on the evidence of the Tenant, I find that the Landlords were served with the Tenant's hearing package as required by s. 89 of the Act 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?
2. Have the Landlords complied with the Act, regulations and tenancy agreement?

Background and Evidence

This tenancy started on May 1, 2016 as a fixed term tenancy with an expiry date of April 30, 2017. The tenancy then continued on a month to month basis as the Landlords re-instated the tenancy by accepting the May, 2017 rent. Rent is \$850.00 per month payable on the 1st day of each month. The Tenant paid a security deposit of \$425.00 on March 18, 2016. The Tenant said a move in condition inspection report was completed but the Tenant said she did not receive a copy.

The Landlords said they issued a 2 Month Notice to End Tenancy for Landlord's Use of the Property because they will be using and occupying the rental unit as a vacation home. The Notice to End Tenancy is dated April 1, 2017 and the effective vacancy date on the Notice is May 31, 2017. The male Landlord said the rental unit is not their primary residence but they will be using and occupying the rental unit for their own use and for family use on a continuing basis after this tenancy ends. The Landlord continued to say they also own a first floor unit in the same complex as the rental unit which was flooded so they are unable to use it for the foreseeable future. The male Landlord said they will be using the rental unit on the third floor as their primary vacation home in the future. The male Landlord said they have no intentions to rent the third floor unit to new tenants.

The female Landlord said she is concerned and upset that the Tenant has questioned the Landlord's actions as not in good faith. The female Landlord said they have tried to be good landlords and have helped the Tenant whenever there was an issue. The female Landlord said they just want their property back so they and their family can use it.

The Tenant said she believes the Landlord may have issued the 2 Month Notice for Landlord's Use of the Property not in good faith. The Tenant said the Landlord gave her an email with a notice of rent increase on March 8, 2017 and agreed to continue the tenancy past the expiry date of the fixed term tenancy. Further the Tenant said the construction on the Landlords' other unit on the first floor as a result of flood damage started well before March 8, 2017; therefore the Tenant did not understand the Landlord's reasoning that the Landlord need her rental unit because the Landlords' other unit could not be occupied. The Tenant said that she does not understand the Landlord's reasoning for the Notice to End Tenancy and consequently thought the Landlord may not be acting in good faith. The Tenant said she would like to continue the tenancy. The Tenant did not provide any evidence that the Landlords would not be occupying the rental unit if the Tenant's tenancy ends. The Tenant requested that the 2 Month Notice to End Tenancy for Landlord's Use for the Property be cancelled and the tenancy be order to continue.

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 his family are going to occupy the rental unit as a vacation home as soon as they are able too. Further I understand the Tenant's confusion with the Notice to End Tenancy as the Landlords did give her a email indicating a rent increase and confirming the tenancy would continue after the end the of the fixed term. I believe the Landlords have created this issue by not communicating effectively. As well it is possible that the Landlords' inexperience may resulted in them not having a full understanding of their responsibilities as landlords. The Tenant has not provided any evidence or testimony to indicate the Landlords are not going to use and occupy the rental unit if the tenancy ends. Consequently, I accept the Landlord's are going to occupy the rental unit at the end of the tenancy and although the Landlords did not communicate well I find they were not acting in bad faith. As a result; 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. Consequently, I dismiss the Tenant's request to cancel the 2 Month Notice to End

Tenancy dated April 1, 2017 and pursuant to section 55 of the Act I grant the Landlord an Order of Possession effective June 30, 2017 at 1:00 p.m. The effective vacancy date on the 2 Month Notice to End Tenancy dated April 1, 2017 is May 31, 2017, which is incorrect. Incorrect effective vacancy dates are automatically corrected under section 53 of the Act to the correct date of June 30, 2017. Any 2 Month Notice to End Tenancy for Landlord's Use of the Property issued any date in April, 2017 automatically has an effective vacancy date of June 30, 2017.

In regard to the Tenant's application for the Landlord to Comply with the Act, regulations and tenancy agreement; I find the Landlords are now complying.

Further as the Tenant has not been successful in her application I order the Tenant to bear the cost of the filing fee of \$100.00 that she has already paid.

Conclusion

The Tenant's application to cancel the 2 Month Notice to End Tenancy for Landlord's Use of the Property is dismissed without leave to reapply.

An Order of Possession effective June 30, 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: May 24, 2017.

Residential Tenancy Branch