



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL

Introduction

The tenant applies to cancel a two month Notice to End Tenancy for landlord use of property received December 10, 2017 with an effective date of February 28, 2018.

The listed parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Do the landlords have a good faith intention to occupy the rental unit?

Background and Evidence

The rental unit is a one bedroom basement suite. The landlords are the owners of the home. The remainder of the home is rented to others.

This monthly tenancy started in March 2013. There is a written tenancy agreement. Currently the monthly rent is \$1088.00. The landlords hold a \$500.00 security deposit.

The landlords have lived in Calgary for the past ten years with their three young children. Mr. M. is in the window supply and installation business. Ms. S. is a homemaker.

Mr. M. testifies that he intends to develop his window business in Victoria and intends to move from Calgary and stay in this rental unit to do so.

Ms. S. says she will stay in Calgary with the children until spring break when she will come out to help her husband set up the home.

Ultimately the landlords intend to sell their Calgary home and live together with their family in Victoria.

The landlords have a fixed term tenancy with the other tenant in the home, expiring August 31, 2018. They own another residential property in Victoria, a three bedroom home that is currently rented out at \$3800.00 per month.

The tenant Ms. K. doubts this intention. She testifies that in April 2017 Mr. M. contacted her asking her to pay an 11% increase in rent despite the fact that the landlords had imposed the authorized statutory increase in four of the past five years. She refused. She says he also demanded a 12% increase from the family living upstairs. At first they agreed but later changed their minds and moved out.

Ms. K. is a senior on a fixed income. It is not disputed that the rental market in Victoria is a landlord's market, with limited availability and with rent rates climbing well in excess of the cost of living.

Analysis

Section 49 of the *Residential Tenancy Act* (the "Act") provides that a landlord may end a periodic tenant by giving the Notice given here.

If the Notice is challenged it is the arbitrator's task to ensure that the Notice is in the form mandated by the *Act* and that the landlord has a good faith intention to occupy the rental unit.

In this case the Notice is in the proper form and I find the landlords' explanation for the Notice to be a plausible and reasonable one.

The fact that last April they attempted to jump the rent increase regulation and ask a larger rent increase than they could impose by law is a fact that raises a suspicion.. But the suggestion that the landlords are really evicting the tenant so that they can obtain a

new tenant at a higher rent is, at this point, speculation. Speculation is not enough to warrant setting the Notice aside.

I realize that this decision will likely cause a hardship to the tenant, but the law and this evidence requires that her application to challenge the Notice be refused.

Section 55 of the *Act* obliges me to grant the landlords an order of possession. I grant the landlords an order of possession effective February 28, 2018.

Conclusion

The application is dismissed. The landlords will have an order of possession.

I would note to the parties that under s. 51 of the *Act* a tenant is entitled to receive the equivalent of one month's rent back from the landlords on or before February 28, 2018 or to not pay her last month's rent. If the landlords fail to occupy the premises for at least six months within a reasonable period of time after February 28 the tenant may seek an amount equivalent to one month's rent as a penalty, as well, I assume, she may claim for any damages suffered, should it be shown that the landlords did not have a good faith intention.

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: January 17, 2018

Residential Tenancy Branch