



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF

Introduction

This hearing dealt with the tenant's application for dispute resolution, seeking to cancel a notice to end tenancy issued by the landlord for the landlord's use of the property. The tenant also applied for the recovery of the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form and make submissions to me. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issues to be Decided

Has the landlord validly issued the notice to end tenancy and does the landlord intend, in good faith, to move into the rental unit? Is the tenant entitled to the recovery of the filing fee?

Background and Evidence

The rental unit consists of the upper level of a two level home. The lower level houses two suites rented out separately.

The tenancy started on April 01, 2016. The tenant pays \$1,451.80 per month. On October 31, 2017, the landlord served the tenant with a two month notice to end tenancy for landlord's use of property, to be effective on December 31, 2017.

The reason the landlord gave the notice to the tenant is described as, the rental unit will be occupied by the landlord or the landlord's spouse or a close family member of the landlord or the landlord's spouse. The tenant disputed the notice in a timely manner.

The landlord stated that his adult son who is 24 years old and employed wants to move into the rental unit along with his girlfriend. The landlord also stated that after a warning from the local municipality office, the landlord has to remove or legalise the suites in the lower level. The landlord stated that his son would be helping him deal with the City requirements while he occupied the upper level.

The tenant stated that she believed that the notice was served in bad faith because the landlord assumed that she had made a complaint to the City office regarding the lower level suites. The tenant said she did not believe that the person moving in was the landlord's son and requested to see a birth certificate and other evidence like a statement from the landlord's son about his intentions to live in the rental unit.

Analysis

When the tenant alleges bad faith on the part of the landlord, the landlord has an onus to prove they are acting in good faith. Based on the sworn testimony of the landlord, I find that the landlord's intends in good faith to allow his son to move into the rental unit and assist him with the requirements of the municipality to bring the suites on the lower level of the rental property into compliance with City by laws.

The tenant argued that the landlords had failed to act in good faith and in the absence of any evidence to support this allegation; I find the landlords have met the good faith requirement of the legislation and intend to allow their son to move into the rental unit. Therefore, I find that the notice to end tenancy must be upheld and accordingly I dismiss the tenant's application.

Section 55 of the *Residential Tenancy Act* addresses an order of possession for the landlord and 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 find that the landlord served the tenant with a notice to end tenancy that complies with section 52 (form and content of notice to end tenancy). Since the landlord has met the good faith requirement, I have dismissed the tenant's application for dispute resolution and have upheld the notice to end tenancy.

Under the provisions of section 55, I must issue an order of possession when I have upheld a notice to end tenancy. Accordingly, I so order. The tenant must be served with the order of possession. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

The tenant has not proven her case and must bear the cost of filing her application.

Conclusion

The notice to end tenancy is upheld and I grant the landlord an order of possession effective by **1:00 p.m. on March 31, 2018**. The remainder of the tenant's application is dismissed.

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 18, 2018

Residential Tenancy Branch