



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OLC, PSF, CNL, OP, FF

Introduction

In the first application the tenants seek a compliance order regarding a second source of heat in the rental unit and an order that the landlords provide that facility. By implication they also seek to cancel a two month Notice to End Tenancy for landlord use of property received November 28, 2017.

In the second application the landlords seek an order of possession pursuant to the Notice.

Rule 2.3 of the Rules of Procedure state that applicants may not bring unrelated claims and that an arbitrator can dismiss unrelated claims with or without leave to re-apply. In this case the parties have received a priority hearing because the tenancy is threatened by the two month Notice. I exercise my discretion to proceed with the tenants' claim regarding the two month Notice and to dismiss the remainder of the tenants' claims, with leave to re-apply.

All 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 valid grounds for issuing the Notice and are they acting in good faith?

Background and Evidence

The rental unit is a manufactured home on a ranch. The landlords live nearby on the same property in their own house. The tenancy started in January 2017. The monthly rent is \$500.00. The landlords hold a \$200.00 security deposit.

As well, it appears that at the start of the tenancy the landlords collected the “first and last” months’ rent. Under the *Residential Tenancy Act* (the “Act”) such a payment is technically a security deposit because it is money paid by a tenant to a landlord that is to be held as security for any liability or obligation of the tenant respecting the residential property, namely; future rent. A landlord is only entitled to collect a security deposit up to one half month’s rent; \$250.00 in this case, and so they are holding \$450.00 too much in deposit money. The tenants are entitled to immediately offset that excess against rent due or to claim it as security deposit money after the tenancy ends.

The landlord Ms. L. testifies that her aged parents have been living together in assisted living care. Her mother has dementia and, as she no longer qualifies for assisted living, Ms. L. has had to move her into a long term care facility.

Her father is eighty nine years old and the landlords want to move him into the tenants’ rental unit. They cannot afford to pay for his assisted living costs and Ms. L.’s mother’s long term care facility costs.

The tenant Ms. F. has grave doubts about the landlords’ alleged plan. She says the landlords have never gotten along with Ms. L.’s father and Ms. L. has told her so. The father lived in a cabin beside the house in the past and Ms. L. had said he was a nuisance and that she’d had no relationship with him since she was a teenager. She says the rental unit has too many stairs and elevations for him and there are hazards in the home that he could not cope with. She also thinks the landlords can get a higher rent from new tenants and might have that as a motive to evict her.

In reply the landlord Ms. L. states that the rental unit is about 75 yards away from her house and so any nuisance factor from her father will be diminished. She says the elevation changes in the rental unit are not severe. There is one step in the rental unit. Interior Health will come in and ensure the unit is safe for him. Her father still walks, with a cane, and drives a vehicle. She intends to install railing in the tub/shower area. The cabin is also not suitable for him because it does not have adequate heat.

Analysis

The landlords gave a Notice in the proper form and appear to have a good reason for giving it.

It is well known that rents, even in the interior of the province, are climbing and there is a housing shortage in many places. Caution must be exercised to ensure that a landlord giving a two month Notice to move in does not have the ulterior motive of simple profit.

I have considered the testimony carefully and find that the landlords do have a good faith intention of moving Ms. L.'s father into the rental unit.

Moving won't be easy for the tenants. They have been operating a business out the rental unit and have a big container on the property. However, that factor is not a factor that can affect the validity of this Notice.

Conclusion

I find that the Notice to End Tenancy served November 28, 2017 is a valid Notice and has caused this tenancy to end January 31, 2018. Under section 55 of the *Act*, the landlords are entitled to an order of possession. In the circumstances I grant them an order of possession effective February 28, 2018. The tenants will be obliged to pay occupation rent for February. They may apply the \$450.00 excess security deposit money to that rent if it hasn't already been paid. Otherwise it will form part of the security deposit money the landlords' hold.

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: February 04, 2018

Residential Tenancy Branch