



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FF

Introduction

This matter dealt with an application by the Tenants to cancel a 2 Month Notice to End Tenancy for the Landlord's Use of the property and to recover the filing fee for this proceeding.

The Tenant said he served the Landlord with the Application and Notice of Hearing (the "hearing package") by personal delivery on April 14, 2018. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenants' 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?

Background and Evidence

This tenancy started on April 1, 2016 as a month to month tenancy. Rent is \$1,000.00 per month payable on the 1st day of each month. The Tenant paid a security deposit of \$500.00 at the start of the tenancy. The Tenant said there was no condition inspection report done at the start of the tenancy. The Landlord agreed.

The Landlord said she had an agent personally serve the Tenants with the 2 Month Notice to End Tenancy for Landlord's Use of the Property dated March 29, 2018. The Notice has an effective vacancy date of May 31, 2018 on it. The Landlord said the reason on the Notice to End Tenancy is that a family member is moving into the rental unit. The Landlord continued to say that her daughter is moving into the rental unit as soon as possible to take care of her brother who has health issues. The Landlord said the rental complex is a duplex and her son will be moving into the other unit in the duplex. The Landlord continued to say her son has serious health issues and having her daughter next door and the Landlord approximately 3 minutes away will provide the

best care for her son. The Landlord said she needs to end this tenancy for health reasons with her family.

The Tenants said the Landlord used the same Notice to End Tenancy to end the tenancy on the other side of the duplex, but no family member has moved in as of yet. The Tenant continued to say that a non family tenant moved in for a while and now the unit is empty. The Tenant said they think the Landlord may not be acting in good faith given the Landlord's actions in the previous eviction. For this reason the Tenant said the 2 Month Notice to End Tenancy should be cancelled.

The Landlord said their son could not move in right away so they did a short term tenancy and the unit has been empty since February, 2018 so that their son can move in when he is able. The Landlord said she believes her son will move in to this unit at the same time as her daughter moves into the other unit of the duplex. The Landlord said she submitted a letter from their daughter confirming that she was moving into the rental unit as soon as possible and that she will be caring for her brother.

The Tenants said they had not heard the background reasoning for the Notice to End Tenancy until they received the Landlord's evidence package. As a result of not knowing the background reasoning and the Landlord's lack of maintenance and general lack of attention to details of the tenancy the Tenants believe the Landlord is not acting in good faith. The Tenant continued to say that a move on May 31, 2018 is not reasonable and requested to extend the effective vacancy date to June 30, 2018 if their application is not successful.

The Landlord said she would agree to June 30, 2018 as the date to end the tenancy if that worked for the Tenants.

Further the Tenants asked if the June rent would be free as required by the 2 Month Notice to End Tenancy for Landlord's Use of the Property.

The Landlord agreed that June 2018 rent would be free to the Tenants.

The Tenant asked if their security deposit of \$500.00 would be returned as the Landlord did not complete a move in condition inspection report at the start of the tenancy.

The Landlord agreed to return the security deposit with in 15 days of the tenancy ending.

The Landlord said in closing she wants to end the tenancy so their family can move into the duplex for health reasons.

The Tenant said in closing that he believes the Landlord is not acting in good faith, but he understands an owner of a property can and should be able to use the property for their own family.

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's daughter is moving into the unit as soon as she is able too. Consequently, I find the Tenants have 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 Tenants' request to cancel the Notice to End Tenancy dated March 29, 2018 and pursuant to section 55 of the Act, I grant the Landlord an Order of Possession effective June 30, 2018 at 1:00 p.m.

Further I order the Landlord to compensate the Tenants the June 2018 rent, pursuant to section 51 of the Act when issuing a 2 Month Notice to End Tenancy for Landlord's Use of the Property. As well since the Landlord did not complete a move in condition inspection report, as required pursuant to section 24 of the Act, the Landlord's claim against the Tenants' security deposit is extinguished. The Landlord has 15 days from the end of tenancy to return the Tenants' security deposit.

As the Tenants were unsuccessful in their application, I order the Tenants to bear the cost of the \$100.00 filing fee which they have already paid.

Conclusion

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

An Order of Possession effective June 30, 2018 has been issued to the Landlord. A copy of the Order must be served on the Tenants 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 22, 2018

Residential Tenancy Branch