



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ROYAL LEPAGE NANAIMO REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNL

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property (the 2 Month Notice) pursuant to section 49.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed that the first named landlord was an agent of the named second landlord and that the hearing could proceed in their absence. Both parties confirmed that the tenant served the landlord with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail. Both parties also confirmed that the landlord served the tenant with her submitted documentary evidence via Canada Post Registered Mail. As both parties have attended and confirmed receipt of the notice of hearing package and the submitted documentary evidence of the other party, I am satisfied that both parties have been sufficiently served as per section 90 of the Act.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 2 Month Notice?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Both parties agreed that the landlord served the tenant with a 2 Month Notice dated May 14, 2018 by Canada Post Registered Mail on May 14, 2018. The 2 Month Notice sets out an effective end of tenancy date of July 31, 2018 and the reason for the notice was:

The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse).

The tenant argued that the landlord is not in good faith occupy the rental unit because:

- The tenant lives and works in the City of New Westminster
- The tenant received an email on May 5, 2018 from the landlord requesting a \$100.00 rent increase after having increased it on January 1, 2018 by the allowed amount (4%).

The tenant clarified that she had received an email on May 5, 2018 in which the landlord outlined an "option" to increase her rent by \$100.00 in exchange to include water services that are not part of her tenancy agreement. The tenant stated that she accepted this email as an opportunity for the landlord increase the rent. Extensive discussions with both parties confirmed that this was an offer of an "option" and not a demand for a rent increase as claimed by the tenant.

The landlord argued that she intends to occupy the space as claimed, but as a vacation/weekend retreat/home. The landlord confirmed that she will continue to primary reside and work in the City of New Westminster. The landlord claims that she had previously used this space as a retreat and now wishes to do so again based upon recommendations from her physician.

Analysis

Section 49 of the Act sets out that a landlord may end a tenancy in respect of a rental unit where a close family member of the landlord intends in good faith to occupy the rental unit.

In this case, I accept the undisputed affirmed testimony of both parties and find that the tenant has been properly served with the 2 Month Notice via Canada Post Registered Mail.

Where a tenant applies to dispute a 2 Month Notice, the onus is on the landlord to prove, on a balance of probabilities, the reasons on which the 2 Month Notice is based.

Further 2 Month Notices have a good faith requirement. *Residential Tenancy Policy Guideline* “2. Good Faith Requirement when Ending a Tenancy” helps explain this “good faith” requirement:

A claim of good faith requires honesty of intention with no ulterior motive. The landlord must honestly intend to use the rental unit for the purposes stated on the Notice to End the Tenancy...

If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy.

If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate they do not have an ulterior motive for ending the tenancy.

The tenant argued that she believes the landlord will not in good faith occupy the rental space as she resides primary and works in the City of New Westminster. The tenant has also argued that the landlord had attempted to increase her rent and after doing so received the 2 Month Notice.

The landlord responded to the claims stating that her “occupying” the space was not going to be on a permanent basis. The landlord confirmed that her primary residence would continue as she works in the City of New Westminster. The landlord stated that she would be using the rental space as a “vacation/retreat” on the weekends and holidays.

In this case, I accept the evidence of the landlord over that of the tenant and find that the tenant’s claims of “no good faith” are unfounded. The landlord provided direct and clear intentions on when and how she would use the rental space moving forward as “vacation/retreat” and maintain her primary residence in the City of New Westminster.

As such, the tenant's application to cancel the 2 Month Notice is dismissed. The 2 Month Notice dated May 14, 2018 is upheld. The landlord is granted an order of possession pursuant to section 55 of the Act. The order of possession shall be effective as per the stated date on the 2 Month Notice of July 31, 2018.

Conclusion

The tenant's application is dismissed.
The landlord is granted an order of possession.

The order must be served upon the tenant. 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.

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: July 20, 2018

Residential Tenancy Branch