



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, MNDC, RP, 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 landlord's use of the property. The tenant also applied for an order directing the landlord to carry out repairs and for a monetary order for compensation in the amount of \$7,500.00. The compensation claimed by the tenant is for repairs done by her and for the loss of quiet enjoyment of the rental property. The tenant applied for the recovery of the filing fee.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony and to make submissions. Both parties represented themselves. As both parties were in attendance I confirmed service of documents. The parties confirmed receipt of each other's application for dispute resolution and evidence.

RTB Rules of Procedure 2.3 states that if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply.

In this regard I find the tenant has applied for an order for the landlord to make repairs and for compensation. As these sections of the tenant's application are unrelated to the main section which is to cancel the two month notice to end tenancy for landlord's use of property, I dismiss these sections of the tenant's claim with leave to reapply.

Accordingly this hearing only dealt with the tenant's application to set aside the notice to end tenancy.

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 tenancy started 11 years ago. The tenant pays rent in the amount of \$2,500.00 per month. The rental unit consists of a house with a basement suite. The tenant rents out the basement suite separately.

The landlord testified that she currently lives in the basement of her mother's home and had moved in there about four years ago. The other landlord lives on the main floor of their mother's house. The landlord testified that her mother passed away about four years ago and that she and her sister own the home they are currently living in. The landlord stated that she intends to move into the rental unit and allow her 80 year old father to occupy the basement suite.

On May 02, 2018, the landlord served the tenant with a two month notice to end tenancy for landlord's use of property with an effective date of June 30, 2018. The tenant disputed the notice in a timely manner.

The tenant stated that she believed that the notice to end tenancy for landlord's use of property was issued in bad faith as the landlord intended to rent the unit for a higher rent. The tenant stated that there was a leak in the house due to a cracked foundation and the landlord requested her to do some work towards the repairs to justify the low rent that she paid. The landlord denied the allegations.

Attempts made to get the parties to settle their dispute were unsuccessful.

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 accept the landlord's testimony that she intends to move out of her mother's basement suite and occupy the rental property. I also accept that the landlord intends to have her father move into the basement suite.

The tenant argued that the landlord had failed to act in good faith and has no intention of moving into the basement. The tenant stated that the landlord wants to rent out the basement for a higher rent. The tenant stated that the landlord was looking for a way to evict her for the sole purpose of re-renting the unit at an increased monthly rent.

In the absence of sufficient evidence to support this allegation of bad faith; I find the landlord has met the good faith requirement of the legislation and intends 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 for landlord's use of property on May 02, 2018. 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.

During the hearing, I asked the landlord to provide me a date of the end of tenancy, in the event I upheld the notice. The landlord agreed to give the tenant some additional time to move out and offered a move out date of October 01, 2018.

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. I grant the landlord an order of possession effective by 1:00 pm on October 01, 2018. 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.

During the hearing I informed the landlord about section 51(2)(a) of the *Residential Tenancy Act* which states that if steps have not been taken to accomplish the stated purpose for ending the tenancy under section 49 (landlord's use of property) within a reasonable period after the effective date of the notice, or section 51(2)(b) which states that if the rental unit is not used for that stated purpose for at least 6 months beginning within a reasonable period after the effective date of the notice, the landlord must pay the tenant an amount that is the equivalent of double the monthly rent payable under the tenancy agreement.

Conclusion

The notice to end tenancy is upheld and I grant the landlord an order of possession effective by 1:00pm on October 01, 2018. The remainder of the tenant's application is dismissed with leave to reapply.

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 11, 2018

Residential Tenancy Branch