



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL FF

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A hearing by telephone conference was held on October 15, 2018. The Tenant applied to cancel a 2 Month Notice to End Tenancy for Landlords Use of the property, pursuant to the *Residential Tenancy Act* (the "Act").

Both parties were represented at the hearing. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

The Landlord confirmed receipt of the Tenant's application and notice of hearing. Neither party submitted any documentary evidence.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Issues(s) to be Decided

- Is the Tenant entitled to have the Landlord's Notice cancelled?
 - If not, is the Landlord entitled to an Order of Possession?

Background and Evidence

The Tenant acknowledged receiving the Notice on August 27, 2018. The Landlord issued the Notice for the following reason:

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).

In the hearing, the Landlord stated that she is the owner of the house, and the Tenant has rented the property for many years. The Landlord stated that she also has a house in a different municipality, but in order to gain better, more timely access to medical care, she wants to move into this house. The Landlord stated that she is planning on moving into the house with her mother, 2 cousins, a sibling, and her daughter. The Landlord stated that she had initially thought about selling the house, or one of the houses, but she is going to wait for a couple of years until the market improves. In the meantime, the Landlord stated that she wants to move into the house with some of her family, so that she can have better access to healthcare.

The Tenant stated that he believes that Landlord has issued the Notice in bad faith because she just wants him out. The Tenant believes that this is partly due to the fact that he has a dog which the Landlord does not like, and since their relationship has recently become strained. The Tenant stated that when they were given the Notice, it was explained to them that the Landlord did not want a mortgage, and so it made the Tenant question how truthful the Landlord was being about moving into the rental unit.

The Landlord stated that she has had thoughts about selling, but ultimately, she is going to hold onto the property for a while, and move in herself. The Landlord stated that she is aware that there are a penalty for not doing what the Notice indicates, and she has every intention of moving into the house, as she indicated on the Notice.

Analysis

In the matter before me, the Landlord has the onus to prove that the reason in the Notice is valid and that they intend in good faith to occupy the unit (as she has indicated on the 2-Month Notice).

Based on the evidence and testimony before me, I make the following findings:

I acknowledge that there has been degradation in the relationship between the Landlord and the Tenant. The Tenant is alleging that the Landlord has issued this 2-Month Notice in bad faith and it was issued because their relationship has soured, and to get more money from the rental unit, rather than for the reason listed on the Notice. The Tenant also believes the Landlord does not like his dog. However, in response to the Tenant's allegations of bad faith, the Landlord's daughter expressed that the Landlord (her mother) wants to move into the house in order to be closer to her doctor and her mother's doctor. The Landlord expressed that she is planning on living in the house with several different family members in an attempt to be closer to the services which they rely upon, medically.

In this case, I have considered that the Landlord is planning on living with her mother, and wants this particular location so that she doesn't have to commute as far for medical treatment. I accept that the Landlord's current house is in a different municipality which is a lot further away, which is why she wants to move into this house.

Ultimately, after looking at the totality of the situation before me, I find the explanation from the Landlord regarding her need to be closer to her and her mother's doctor is reasonable and I find the Tenant's allegations of bad faith are not sufficiently demonstrated, such that I would find that Landlord did not intend to occupy the rental property. Further, I note the Tenant stated that the Landlord mentioned something about not wanting a mortgage, and possibly selling the property. However, I find the Landlord's explanation on this point is reasonable. The Landlord stated that she was toying with the idea of selling one of her properties, but ultimately she is holding them because of market conditions, and will move into the property while she holds onto it, in order to be in a more convenient location for different appointments.

I note that under the Act, if the Landlord does not move into the rental unit as set out in the 2-month notice, the Tenant would be entitled to compensation as follows:

Section 51 of the Act reads,

...

(2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement if:

- (a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or
- (b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

Overall, I find the Landlord has sufficiently supported her reasons to issue the 2-month Notice. The Tenant's application to cancel the 2-month Notice is dismissed. The tenancy is ending.

Under section 55 of the *Act*, when a tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the 2-month Notice complies with the requirements of form and content and the Landlord is entitled to an order of possession, as of the effective date of the Notice, November 1, 2018.

As the Tenant was not successful with his application, I dismiss his claim to recover the cost of the filing fee.

Conclusion

The Tenant's application to cancel the Notice to End Tenancy dated August 27, 2018, is dismissed.

The Landlord is granted an order of possession effective November 1, 2018 at 1pm, after service on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order with the Supreme Court of British Columbia and be 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: October 16, 2018

Residential Tenancy Branch