



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OLC

Introduction

This matter dealt with an application by the Tenant to cancel a 2 Month Notice to End Tenancy for the Landlord's Use of the Property and for the Landlord to comply with the Act, regulations and tenancy agreement.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the "hearing package") by personal delivery on September 21, 2018. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant's 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?
2. Has the Landlord complied with the Act, regulations and tenancy agreement?

Background and Evidence

This tenancy started on August 31, 2017 as a month to month tenancy. Rent is \$1,150.00 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 no move in condition inspection report was completed at the start of this tenancy.

The Landlord said he served the Tenant with a 2 Month Notice to End Tenancy for Landlord's Use of the Property dated August 31, 2018. The Notice has an effective vacancy date of October 31, 2018 on it. The Landlord continued to say that he and his wife are living with his parents at the present time and his parents and he and his wife have agreed they will move out of the parent's house and into the rental unit. As a result the Landlord said he issued the 2 Month Notice to End Tenancy for Landlord's Use of the Property to the Tenant. To support the Landlord's situation he provided written letters from his wife, his sister and his father who is also half owner of the rental

unit. The father's submission is notarized. All three written submissions say that the Landlord is moving out of the parents home for family reasons and moving into the rental unit. The Landlord said he would like to move in as soon as possible as he wants to do some renovations first and then move in.

The Tenant said that when she moved in the Landlord said that he would not be selling the rental unit and the tenancy could last for 3 to 5 years. The Tenant said she wanted a long term tenancy as her children are in school in the area and her mother lives close and is an important support person to her family. The Tenant said she would not have moved in if she thought the tenancy would only last 10 months.

Further the Tenant said she believes that the eviction is because she and the Landlord's father had a dispute about the use of the backyards at the duplex. The Tenant said her children used both backyards of the duplex to go though to friends homes and the Landlord's father used the backyard in the other half of the duplex as a garden. The Tenant said the Landlord's father locked the gate and then issued the Notice to End Tenancy.

The Tenant continued to say they had a previous hearing about the same thing and the Tenant won as the Arbitrator found the Landlord did not provide evidence to support his position and the Landlord was not acting in good faith. The Tenant said the same thing is happening in this case.

The Landlord said he never said anything about the tenancy continuing for 3 to 5 years and the tenancy agreement is on a month to month basis which is not a long term tenancy. Further the Landlord said he is not involved in any dispute between the Tenant and his father. The Landlord said he has found his present living situation is not what he wants and he wants to move into his property the rental unit.

The Tenant called her witness L.H. The witness L.H. said the Tenant moved into the unit with the understanding it would be a long term tenancy. As well the Witness L.H. said the Tenant and the Landlord's father did have a dispute and she believes that is the reason for the eviction. The Witness L.H. said if the tenancy ends it will be very difficult on the Tenant to find another rental in the area. Further the Witness said the Landlord could move into the other side of the duplex as that tenant is a single person and is planning to move out.

The Landlord said he does not want to move into the other side of the duplex as it is renovated and is used as a rental to make payments. The Landlord said he wants to do some repairs to this rental unit and then move into it.

The Tenant said in closing that she believes the Landlord is not acting in good faith and the Notice to End Tenancy is not fair. The Landlord led her to believe the tenancy was for a long term and the other side of the duplex will be available soon for the Landlord to move into. The Tenant said the Notice to End Tenancy should be cancelled because the Landlord is not acting in good faith.

The Landlord said in closing he wants to end the tenancy so he and his family can move into the rental unit.

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 and witness letters submitted into evidence that the Landlord and his wife are moving into the unit as soon as they are able too. Consequently, I find the Tenant has not established grounds to prove the Landlord is not acting in good faith and 2 Month Notice to End Tenancy for Landlord's Use of the Property is not valid. I dismiss the Tenant's request to cancel the Notice to End Tenancy dated August 31, 2018 and pursuant to section 55 of the Act; I grant the Landlord an Order of Possession effective November 30, 2018 at 1:00 p.m.

Further I order the Landlord to compensate the Tenant ~~\$1,000.00~~ **\$1,150.00** or one months rent for issuing the 2 Month Notice to End Tenancy for Landlord's use of the Property. As the Tenant has not paid the October, 2018 rent this may be used as the required compensation. The Tenant is responsible for the November 2018 rent of ~~\$1,000.00~~ **\$1,150.00**.

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 Tenant's security deposit is extinguished. The Landlord has 15 days from the end of tenancy to return the Tenant's security deposit.

Conclusion

The Tenant's application to cancel the 2 Month Notice to End Tenancy for Landlord's Use of the Property dated August 31, 2018 is dismissed without leave to reapply.

An Order of Possession effective November 30, 2018 has been issued to the Landlord. A copy of the Order must be served on the Tenant 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: October 29, 2018

Residential Tenancy Branch

CORRECTION NOVEMBER 6, 2018

Residential Tenancy Branch