



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

AS, CNL, FFT, LRE, MNDCT, OLC, OPT, PSF, RP, RR

Introduction

On October 19, 2018, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting to cancel a Two-Month Notice to End Tenancy for Landlord’s Use of Property, to obtain an Order of Possession, for an order for the Landlord to comply with the Act, to suspend the Landlord’s right to enter, for an order to allow a sublet, for an order for the Landlord to provide services or facilities, for a reduction of rent, to request a Monetary Order for compensation, for an order to make repairs, and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

The Landlords, the Tenant and the Tenant’s Witness attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

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

Preliminary Matters

The Tenant submitted ten separate claims as part of this Application and I was aware that we would not have the time to get to all of them during today’s hearing. I asked the Tenant to prioritize the issues that she wanted to address in this hearing and she agreed to focus on whether the tenancy would continue. For these reasons, I severed the Tenant’s other claims in accordance with Rule 2.3 in the *Residential Tenancy Branch – Rules of Procedure*.

The Tenant may choose to re-apply for Dispute Resolution regarding these claims.

Issues to be Decided

Should the 2-Month Notice to End Tenancy for Landlord’s Use of Property, dated October 8, 2018 (the “Notice”), be cancelled, in accordance with Section 49 of the Act?

Should the Tenant be compensated for the cost of the filing fee, in accordance with Section 72 of the Act?

If the Notice is not cancelled, should the Landlord receive an Order of Possession, in accordance with Section 55 of the Act?

Background and Evidence

The Landlord and Tenant agreed on the following terms of the tenancy:

The month-to-month tenancy began on December 1, 2017. The rent of \$1,800.00 is due on the first of each month. The Landlord collected a \$900.00 security deposit and a \$200.00 pet damage deposit.

Landlord JJ Evidence:

The Landlord testified that he served the Notice to the Tenant on October 8, 2018 via registered mail and that the Tenant would have received it on October 12, 2018. The Notice stated that the Tenant had to move out of the rental unit by December 31, 2018 as the Landlord intends on occupying the rental unit.

The Landlord stated that his father, who is also the owner of the rental unit, is planning to move into the rental unit as his health is being negatively affected by living with his larger family.

The Landlord submitted a letter dated November 7, 2018 and signed by his father, who was present during the hearing. The letter indicated that Landlord MJ currently lives with his extended family, that the "personal family differences" has been increasingly affecting his physical and mental health, and that he and his wife plan to move into their own house (the rental unit) as he believes that it might have a positive effect on his overall health.

The Landlord submitted a letter, dated October 10, 2018, from the family doctor of Landlord MJ. The doctor acknowledged that Landlord MJ is living in an extended family arrangement where there is psychosocial conflict and that the doctor supports the move in the best medical interest of Landlord MJ.

Landlord NJ Evidence:

The Landlord testified that they have not had any contact from the city bylaw officers about an illegal rental unit. She stated that the tenants have complained to bylaw and that the Landlords haven't heard any response.

The Landlord stated that arrangements for a rent increase were negotiated in August 2018 and that the tenancy was going relatively well; however, changes within the family have resulted in the service of the Notice.

The Landlord said that the grandparents (one being Landlord MJ) lived with the family and assisted with caring for the young children for many years. The current living arrangements have been causing stress for the family and now that her oldest child is old enough to take care of the youngest child, the grandparents (Landlord MJ) want to move out and they do not want to move into a basement suite; they want to live in the upstairs of their own home (the rental unit).

The Landlord testified that Landlord MJ's health is a priority and it is the family's intention to move Landlord MJ into the rental unit.

The Landlord, (all of them), stated they understood the twelve months of compensation that could be due to a tenant if the Landlord did not follow through with their intention of occupying the rental unit.

Tenant Evidence:

The Tenant testified that she does not believe that the Landlord MJ intends on moving into the rental unit and feels that the Landlord has issued the Notice based on the Tenant disputing a rent increase in September 2018 and as a result of bringing various issues to the Landlord's attention for remedy.

The Tenant stated the city is actively investigating the illegal suites in the lower level of the rental unit and has a witness to testify in this regard.

The Tenant stated that on October 26, 2018, the new tenant from the lower rental called up to her and stated, "Very soon I will be living in your place". The Tenant felt that the Landlord favoured the new tenant in the lower rental and that the plan was to move the new tenant into the Tenant's rental unit versus the Landlord. The Tenant stated that her daughter was present to witness the statement by the new tenant and is available to provide testimony to this fact.

The Tenant stated that the Landlord is serving the Notice as he is vindictive after she asked the Landlord to complete repairs in the rental unit and to deal with a previous tenant who had assaulted the Tenant.

The Tenant argued that Landlord MJ has many options to choose from including the lower rental units in the residential property and the basement suite that is in the home he is currently living. The Tenant stated that he does not have to move into her rental unit.

Witness Evidence:

The Witness for the Tenant, stated that she lived in one of the two lower units in the residential property. She testified that she overheard the conversation between the new tenant and the Tenant and confirmed that he said that he would be living in the Tenant's place soon. The Witness acknowledged that the relationship between the Tenant and the new tenant is strained and that there has been previous conflict.

The Witness also stated that the city by-law officers have informed her that one of the illegal rental units will be shut down, likely the Witness' rental unit.

The Witness stated that the Landlord has responded "decently" to requests for repairs; however, seems not to understand his responsibilities to attend to some of the other issues as raised by the Tenant.

Analysis

Section 49(3) of the Act states that a Landlord may end a tenancy in respect of a rental unit if the Landlord intends in good faith to occupy the rental unit.

Where a Tenant applies to dispute a Two-Month Notice to End Tenancy, the onus is on the Landlord to prove, on a balance of probabilities, the reasons on which the Notice is based.

All three Landlords have presented testimony and evidence to support Landlord MJ and his wife's intention to move into the rental unit.

The Tenant has questioned the Landlord's "good faith" by stating that the Landlord is attempting to end the tenancy as a result of the Tenant making requests for repairs, to have another roommate, by correcting the rent increase amount and "evoking" her rights. Further, the Tenant believes the Landlord has communicated with the new tenant in the lower unit and that the rental unit will be rented out to that family, rather than following through with the occupation by the Landlord.

The *Residential Tenancy Policy Guidelines #2* (the "Guidelines") discusses the legal concept of good faith. The Guidelines refer to *Gichuru v Palmar Properties Ltd*, 2011 BCSC 827 for the suggestion that good faith requires honesty of intention with no ulterior motive.

I accept the Landlords' testimony and evidence that the Landlord MJ and his wife intend to move into the rental unit once it is vacant.

The Tenant has attempted to bring the good faith intent of the Landlord into question by relating the service of the Notice to previous conflicts between the Landlord and the Tenant. The Tenant has also raised some concerns regarding the new tenant's threats that he would be

moving into the Tenant's rental unit. As a result of the Tenant's testimony and evidence, I find that the Tenant has proven that there are many conflicts between the parties, that the Landlord may want to end the tenancy for multiple reasons and that the new tenant may want to move into her rental unit.

However, I find that the Tenant has failed to provide sufficient evidence to specifically support that the Landlord is intending to act dishonestly or has an ulterior motive. As such, I uphold the Notice and find that the tenancy will end on the effective move-out date of December 31, 2018, as stated on the Notice. I dismiss the Tenant's Application to cancel the Notice.

Section 55 of the Act requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a Notice to End Tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a Notice that is compliant with the Act.

Section 52 of the Act requires that any Notice to End Tenancy issued by a Landlord must be signed and dated by the Landlord; give the address of the rental unit; state the effective date, state the grounds for ending the tenancy; and be in the approved form.

I find the Notice, issued by the Landlord on October 8, 2018 complies with the requirements set out in Section 52.

As I have dismissed the Tenant's Application and found that the Notice is valid, I find that the Landlord should receive an Order of Possession for December 31, 2018.

As the Tenant's Application was unsuccessful, I decline to award compensation for the filing fee, in accordance with Section 72 of the Act.

As this tenancy is ending as a result of a Notice issued under Section 49 of the Act, I direct all parties to Section 51 of the Act for their future reference:

Section 51 of the Act directs the Landlord who gives a Tenant notice to end the tenancy under Section 49 of the Act must pay the Tenant an amount that is the equivalent of twelve times the monthly rent payable under the Tenancy Agreement if 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 the rental unit is not used for that stated purpose for at least six months' duration, beginning within a reasonable period after the effective date of the Notice.

As this tenancy will continue for another month, I recommend to all parties that they work together to resolve their conflict in a respectful manner and when required, to communicate in writing to ensure clear understanding and as a means to keep track of their interactions.

Conclusion

Pursuant to Section 55 of the Act, I grant the Landlord an Order of Possession to be effective on December 31, 2018 at 1:00 p.m. This Order should be served on the Tenant as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of 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: November 29, 2018

Residential Tenancy Branch