



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes CNL ERP

Introduction

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

- cancellation of a Two Month Notice to End Tenancy For Landlord's Use of Rental Property, pursuant to section 49 (the Two Month Notice);
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33.

The hearing was conducted by conference call. All named parties attended the hearing and were provided an opportunity to provide affirmed testimony and present evidence. No issues were raised with respect to the service of the application and respective evidence submissions on file.

Issues

Should the landlord's Two Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Should the landlord be ordered to make emergency repairs?

Background & Evidence

The rental unit is one furnished bedroom in a 3 bedroom basement suite. The common areas in the suite have in the past been shared with two other tenants who occupied the other two bedrooms on separate agreements with the landlord. At the time of the hearing, the tenant was the only one residing in the basement suite. The monthly rent is \$566.00 payable on the 1st of each month. The tenancy began back in April of 2013.

The landlord served the tenant with a Two Month Notice on November 27, 2018 by posting it to the tenant's door. The tenant acknowledged service of the Two Month Notice on this same date. The Two Month Notice has an effective date of February 28,

2019. The Two Month Notice was issued on the grounds that a close family member intends to occupy the rental unit.

The landlord's common law spouse C.W. represented the landlord in this hearing. C.W. testified that he is the common law spouse of the landlord and submitted his employer's extended medical profile which shows the landlord is his spouse. C.W. also submitted an intent to rent letter from his daughter which supports that his daughter will be moving into the rental unit and intends to occupy the entire basement suite not just a single room in the suite. C.W. testified that his daughter attends UBC and the bus ride from the rental property would be approximately 25 minutes less than from where his daughter currently resides.

The tenant argues that the rental unit has 3 bedrooms and believes the daughter would only rent one room and sublet the others. The tenant argues that she does not need to vacate as the daughter could occupy one of the other two rooms. The tenant further argues that the Two Month Notice was not issued in good faith as she believes it is retaliation for her requesting repairs and a rent reduction due to an ongoing flooding issue in the unit. The tenant testified that there have been ongoing issues with water entering the rental unit since March 2017. The tenant testified that in November 2018 she requested a rent reduction from \$566.00 per month to \$500.00 per month for the period of December 2018 to March 2019 to compensate her for the inconvenience caused by the ongoing issue. The landlord honored this request.

In final reply, C.W. testified that his daughter currently resides in a two bedroom suite and is the only occupant plus her pets. C.W. testified his daughter wants the entire suite to herself and has no intention to sublet the other rooms. In regards to the flooding, C.W. disputes the tenant's allegation that the flooding has been ongoing. C.W. testified that over the duration of the tenancy there have been 6 separate incidents of water coming into the rental unit. C.W. testified that this only occurs when there is excessive rain and that the landlord has responded and addressed the issue each time.

Analysis

Section 49 of the Act contains provisions by which a landlord may end a tenancy for landlord's use of property by giving notice to end tenancy. Pursuant to section 49(8) of the Act, a tenant may dispute a Two Month Notice by making an application for dispute resolution within fifteen days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the Two Month Notice.

Further, Two Month Notices have a good faith requirement. *Residential Tenancy Policy Guideline #2* "Good Faith Requirement when Ending a Tenancy" provides the following guidance:

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 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.

I accept the testimony of the landlord's spouse and the supporting evidence submitted by the landlord in finding that the landlord intends in good faith to have her step daughter occupy the entire rental unit. I find the landlord does not have any ulterior motive to end this tenancy. I do not accept the tenant's argument that the ulterior motive was the tenant's repeated repair requests or request for a rent reduction. The evidence shows that the landlord took no issue with the tenant's request for a rent reduction and agreed to the tenant's request in providing a reduction since December 2018. The landlord had agreed to a reduced rent up until March 2019. The effective date of the Two Month Notice is not until February 28, 2019. Therefore, even if the landlord was financially benefitting from saving on the promised rent reduction, it would only be for the month of March 2019. The tenant also did not appear to dispute that the landlord's step daughter was going to occupy the rental unit but rather was arguing that she would only occupy one room and sublet the others. I find that this is mere speculation on the part of the tenant and she provided no evidence to support this claim. I find it is reasonable that the landlord is offering the entire basement suite to her step daughter and that she intends to occupy the entire suite.

The tenant's application to cancel the Two Month Notice is dismissed and the landlord is entitled to an Order of Possession pursuant to section 55 of the Act.

As this tenancy will be coming to an end shortly, the tenant's application for emergency repairs is dismissed. The tenant's repair request had to do with the ongoing issue with water entering the rental unit and is therefore not anything that needs to be addressed in the short period from the date of this decision to the end of the tenancy.

Conclusion

I grant an Order of Possession to the landlord effective **1:00 p.m. on February 28, 2019**. 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: February 22, 2019

Residential Tenancy Branch