



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, OPL, MNRL-S, FFT, FFL

Introduction

The tenants apply to cancel a two month Notice to End Tenancy for landlord use of property received July 14, 2020. The Notice states that the landlord intends to occupy the property. The landlord applies for an order of possession pursuant to that Notice and for a monetary award for unpaid rent.

The listed parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

It is agreed the tenants owe rent of \$5430.00 for the months of April, May and June 2020.

The sole remaining issue is whether the landlord has a good faith intention of occupying the rental unit, as required by s. 49(3) of the *Residential Tenancy Act* (the “RTA”).

Background and Evidence

The rental unit is a three bedroom house. The tenancy began in January 2018. The monthly rent is \$2310.00. The landlord holds a \$1100.00 security deposit and a \$500.00 pet damage deposit.

The tenant A.W. apparently moved away in or around March 2018. Mr. R.P., counsel for the tenant Mr. M.T. indicates that even though she has been listed as an applicant,

she may not be aware of the tenants' application or the landlord's counter application seeking an order of possession and a significant monetary award against both tenants.

The landlord testified that she has been living with her partner but due to conflict they are separating. She indicates she is required to move away from her present residence by the end of September 2020, thus the Notice given in July.

On being questioned by Mr. R.P. she agrees that after the Notice there was discussion with the tenant Mr. M.T. about him purchasing the home. A price was discussed and possibly agreed on. She says that she required the tenant to give a formal offer to her realtor and, in her mind, any deal had to close before the end of September so that she could use the funds to purchase other accommodation. She denies that the house was for sale prior to the Notice. She has not listed it or otherwise offered it for sale. The realtor she referred the tenant to is a realtor she'd used some years before.

The attending tenant did not testify though sworn in to do so.

Analysis

The evidence presented at this hearing shows on a balance of probabilities that the landlord has a good faith intention to occupy the rental unit. Talk of sale was an option that was considered by her but no formal offer was made to her realtor. The tenant has not suggested that a contract of purchase and sale was formed (in accordance with s. 39 of the *Law and Equity Act*, RSBC 1996, c. 253). Nor has one been shown to have arisen from the interaction of the tenant and the landlord.

The tenant has not suggested that the Notice was suspended or cancelled by the sale discussions between the parties nor does the evidence show any basis for that possibility.

As a result, the Notice is a valid Notice and results in this tenancy coming to an end September 30, 2020. The landlord will have an order of possession for one o'clock p.m. on that date.

The tenant owes the landlord \$5430.00 for unpaid rent from April, May and June 2020. I grant her a monetary order in that amount. In accordance with the landlord's instructions at hearing, the order will be against the tenant Mr. M.T. alone.

The rents from those months would appear to be “affected rent” according to Residential Tenancy Policy Guideline 52: “COVID-19: Repayment Plans and Related Aug-20 Measures.” The parties are directed to that guideline regarding payment or enforcement of the monetary order.

Conclusion

The tenants’ application is dismissed. The landlord’s application is allowed and she will have an order of possession for September 30, 2020 and a monetary order for the rent of \$5430.00 plus the \$100.00 filing fee for her application; a total of \$5530.00.

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: September 08, 2020

Residential Tenancy Branch