



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Vancouver Native Housing Society and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC

Introduction

This hearing was convened in response to an application by the Tenant for an order cancelling a notice to end tenancy pursuant to section 47 of the *Residential Tenancy Act* (the “Act”).

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Background and Evidence

The following are agreed facts: the tenancy with the current Landlord started on June 1, 2017. Rent of \$320.00 is payable on the first day of each month. The Landlord gave the Tenant a one-month notice to end tenancy for cause dated January 29, 2020 (the “Notice”). The Notice has an effective date of February 28, 2021. The reason set out on the Notice is that the Tenant has breached a material term of the tenancy. the Notice details that the Tenant’s son is an occupant of the unit with the Tenant. The Landlord provided the Tenant with a letter setting out that section 14 of the tenancy agreement provides that occupants must be approved by the Landlord.

The Tenant states that its tenancy of the unit started on October 16, 2001. The Landlord states that it does not know when the Tenant started to occupy the unit.

The Landlord states that it does not know when the son moved into the unit but that the son was seen in the unit with the Tenant in July 2019 and has been seen by others coming and going. The Landlord states that the Tenant also informed the Landlord in July 2019 that the son was living in the unit. The Landlord provides a witness letter of this information being provided to the Landlord. The Landlord states that they did not act sooner in relation to the son's occupancy as they believed that the matter had been resolved in October 2019. The Landlord states that it was not until October 2020 and forward that the Tenant informed the Landlord of the son living in the unit. The Landlord states that the Tenant also informed the Landlord that the Tenant had shared custody and that the Tenant had to son on a half time basis.

The Tenant states that the son does stay at the unit because of the shared custody and that the son spends 7 days twice a month at the unit. The Tenant states that that mother has primary care of the son and that the son lives with the mother. The Tenant provides a letter from the mother's landlord confirming that the son lives with their tenant, the mother, and that the mother is paying rent based on this occupancy. The Tenant provides another document from a ministry indicating that the mother is receiving assistance for the son living with the mother. The Tenant states that the son has been staying with the Tenant since the onset of the tenancy in accordance with the shared custody, that the previous and current Landlord knew of this and accepted this custody arrangement without complaint, even providing the son with its own entry fob 5 years previous. The Tenant argues that the Landlord knew and allowed this arrangement for several years and cannot now object. The Tenant states that the Landlord is seeking to end this tenancy not because of the son but because the Tenant has refused the Landlord's request to move to another smaller unit for renovations to the Tenant's unit.

The Landlord states that the Tenant was offered the other unit not to renovate the Tenant's unit but to give the Tenant a fresh start as the Tenant's unit is in "horrendous" and concerning condition. The Landlord declined to respond to the Tenant's argument that the Landlord did nothing for so long that it now cannot act.

Analysis

Section 47(1)(h) of the Act provides that a landlord may end a tenancy by giving notice to end the tenancy if the tenant has failed to comply with a material term, and has not corrected the situation within a reasonable time after the landlord gives written notice to do so. The doctrine of laches is based on the legal principle that a legal right or claim will not be enforced or allowed if a long delay in asserting the right or claim has prejudiced the adverse party. Although the Landlord appears to base its evidence of the unit being occupied by the son on comments made by the Tenant, I also consider that the Landlord was informed that this occupation was due to a shared custody of the son. Given the supported evidence that the Tenant's son resides with its mother, I find on a balance of probabilities that the son only stays with the father as part of that custody arrangement and does not occupy the unit as a full-time residence.

Additionally, given the undisputed evidence that the son was provided a fob for entry to the unit by the Landlord several years ago and without any evidence that the Landlord did not provide the fob or know that the son had the fob or that the Landlord removed the fob from the son at any time, I consider that the Landlord knew of the son's presence for several years and did nothing. The evidence supports that the Landlord accepted some time ago that the Tenant was not breaching any material term of the tenancy and I find therefore the Landlord cannot now seek to end the tenancy for breach of the same term of the tenancy agreement. For these reasons I find on a balance of probabilities that the Notice is not valid and that the Tenant is entitled to its cancellation. The tenancy continues.

Conclusion

The Notice is cancelled, and the tenancy continues.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: May 3, 2021

Residential Tenancy Branch